Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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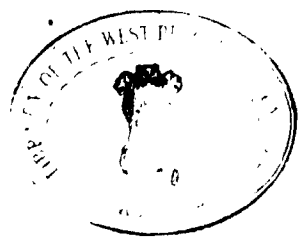

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FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS

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Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 23rd April, 1892.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The HON'BLE J. T. WOODROFFE, *Offg. Advocate-General*.

The HON'BLE SIR HENRY HARRISON, KT.

The HON'BLE T. T. ALLEN.

The HON'BLE H. J. S. COTTON.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

The HON'BLE GONESH CHUNDER CHUNDER.

NEW MEMBERS.

THE HON'BLE MESSRS. WOODROFFE and RISLEY and BABU GONESH CHUNDER CHUNDER took their seats in Council.

STATEMENT OF THE COURSE OF BUSINESS.

THE HON'BLE THE PRESIDENT said:—"Before we begin the proceedings of the day, I ask your permission to make a brief statement of the course of legislation which I propose to lay before the Council, and which I trust will be carried through in the Session which we have to-day begun. You are aware, no doubt, that we had two Bengal Bills which would, in the ordinary course, have been laid before this Council. One was a Bill to amend the Court of Wards' Act, and the other was a Bill to create and define the terms of service for a new body—the Bengal Military Police—in which the existing Military Reserves and the force known as the Chittagong Hills Frontier Police, now serving in the South

Lushai district, are merged. Both of these Bills were, however, taken over by the Government of India, and have been passed into law by the Supreme Legislative Council, and consequently there was no legislative work ready to be laid before this Council during the cold weather.

"We, however, are not confined, like the Supreme Council, to the short period of the cold weather for carrying on our legislation, but we are able to conduct it all through the year. I trust in the present Session we shall be able to pass three Bills. Two of these are to be introduced and laid before the Council and, I believe, forwarded one stage to-day. These are the Bill to amend the Village Chaukidari Act of 1870 and the Bill to make better arrangements for the distribution of the charges for keeping up a Fire-brigade in Calcutta. The objects and reasons and the nature and provisions of these Bills will be laid before the Council by the hon'ble members in charge, and it is unnecessary for me to make any remarks upon them.

"There is a third Bill which I should have been glad, if it had been possible, to present to you to-day. I mean the Bill to amend the Bengal Municipal Act. We are not, however, sufficiently forward with our preparations to enable me to ask the Council to permit its introduction to-day. The Bill has been drafted in a tentative form, and has been circulated to all District Officers in Bengal with instructions to procure the opinions of the different Municipal Corporations in their districts upon the provisions of the Bill; and though that was done some months ago, and I hoped that by this time we should have had all the replies ready and tabulated and a précis made of them, so that, after making any necessary alterations in the first tentative draft, the Bill might have been brought forward and published to-day, the replies have not been received from a good many districts, and the case did not appear to be sufficiently forward to justify me in troubling the Council with it upon this occasion. I trust, however, that we shall meet again in July, and I may then be able to lay this Bill before you, and that we shall possibly either complete it during the Session of July and August, or possibly it may be necessary, in order to fully consult public opinion and to give the amplest consideration to all the changes which may be proposed and to all objections which may be taken, to postpone it till the cold weather. However, with regard to the other two Bills, which, I believe, contain much less contentious matter, I trust we shall be able in the Session of July and August to give them final consideration and to pass them into law.

[*The President; Mr. Cotton.*]

"The programme of our legislation is, therefore, this, that these two Bills shall be introduced to-day and referred to Select Committees, and that the further consideration of them shall be taken up in July, so that they may in all probability be passed into law in July and August; and that the Municipal Act Amendment Bill shall be introduced in July, and such progress as may be found possible made with it so as to complete it in that Session, or else, if necessary, to postpone it for a month or two later, but at any rate to carry it through before the end of the calendar year."

VILLAGE CHAUKIDARI ACT, 1870, AMENDMENT BILL.

THE HON'BLE MR. COTTON moved for leave to introduce a Bill to further amend the Village Chaukidari Act, 1870.

He said:—"Mr. President, as I shall ask you to be good enough to suspend the Rules for the Conduct of Business to enable me to introduce this Bill in Council, I do not propose to address the Council on the subject of the Bill at the present stage. I now merely ask permission to introduce the Bill."

The Motion was put and agreed to.

The HON'BLE MR. COTTON said:—"I now apply to your Honour to suspend the Rules of Business to enable me at this meeting to introduce the Bill to further amend the Village Chaukidari Act, 1870, and to move that it be read in Council. The object of my asking for this suspension of the Rules of Business is merely to be able to advance the Bill a definite stage to-day, in order that it may be published, and that public opinion may be obtained upon it before measures are taken for passing it into law."

The HON'BLE THE PRESIDENT having declared the Rules of Business to be suspended—

The HON'BLE MR. COTTON said:—"The Bill which I have now in my hands is a comparatively small measure. It effects further amendments in the Village Chaukidari Act of 1870, which hon'ble members will doubtless recollect has been on two or three occasions before this Council for amendment. An amendment of that Act was passed in 1871, and again after considerable discussion, in 1886.

"Although this Bill is in its way a very small measure, I shall, I fear, be obliged to occupy the time of the Council for a few minutes in explaining its principle, which is opposed in some important particulars to the principle of the existing law. The village watch of Bengal, as of all India, is one of the oldest institutions of the country connected with the village system itself, and the village watchman of ancient Hindu times is substantially the counterpart of the village watchman as he is recognised by existing legislation; that is to say, the village watchman is ordinarily a member of an hereditary thieving caste, and responsible for his behaviour to no one except to the village community by whom he is maintained. That was the constitution of the village watch in ancient Hindu times, and it is practically the constitution of the village watch at the present day. Under the Mogul administration there was some change effected. The character of the Mogul Government was eminently fiscal, and the village watchman, instead of being the village servant, became to a very large extent the servant of the zamindar, and that dual position remained for a very long time under British rule, and still remains in all parts of the country where Act VI of 1870 has not been enforced. The object of Act VI of 1870 was to place the village watch everywhere under the control of the village organization. The principle of the Bill, as stated by the hon'ble member who introduced it, was this:—'The village watchman is purely a village servant employed for the protection of the lives and the property of the villagers, and looking to the village community for the regular payment of the remuneration to which he is entitled.' It was laid down at that time in this way. It was said municipalise more, trust the people, trust the villagers with the control of their own village watch, and great improvement in Police administration will ensue. That doctrine was of course hotly discussed and disputed in this Council; but ultimately it prevailed, and the effect of the present chaukidari law is to place the village watch entirely under the control and under the influence of the village community. The Bill, I have now the honour to place before you, introduces a modification of this principle. It is my own view strongly, and it is the view of the present Government, that the Police is a branch of the administration which ought to be brought into closer relations with the Government; and I for one—and I trust the Council will join me in this—look forward to the time when the village watch will be so largely modified as to become the real efficient Police of the country, and when the existing constabulary will have virtually no other functions to discharge

than those of escort and guard, and to some extent that of process-serving. The present Bill is a slight step in this direction—not a very decisive step perhaps—for it does not pretend to be more than a very gradual and small measure, but it is a step in the direction of centralizing Police administration, and of bringing the village watch much more than it now is under the immediate supervision of the District Magistrate who represents the Government in the mufassal. I apprehend, gentlemen, that this change of principle which we are introducing will, so soon as it is realised, be unfavourably received by a considerable section of public opinion in Bengal. The meaning of the Bill does not, however, seem to have been understood as yet by the general public, for I have before me the report of the Indian Association, who so far misconceive the object of the Bill as to say that they welcome it as a further expansion of the principle of Local Self-Government in these Provinces. The prayer of the Association is, that further powers may be given to the punchayet of the village. Now I must say, once for all, that this Government does not look on the administration of the Police as in any way connected with the development or extension of the principle of Local Self-Government; on the contrary, we believe that if there is any duty of the Government which it is inexpedient to municipalise, it is the control of the Police. The inhabitants of a village have no claim to a municipal administration in any respect, still less have they any claim to control the Police. For the discharge of such duties the highest possible qualifications must be secured, and when the low calibre of the men who constitute a village punchayet is considered, the advantage appears to be wholly on the side of a Police administration by the Central Government. I am not only expressing my own decided opinion in this matter, but I may remind the Council that the subject is amply discussed by no less an eminent authority than the late Mr. John Stuart Mill, whose book on representative Government might well be more widely read in this country amongst the friends and advocates of Local Self-Government. He lays down in that volume with great force and clearness that the Police is a department of the Government which cannot be entrusted to the representatives of a rural tract; and so in England, we have withdrawn the control of the village police from the villagers, and the old village watch has disappeared. In Bengal we do not go so far as to desire that the village watch of this country shall altogether disappear, and we wish to adhere to the only sound element of the chaukidari system, viz., that of retaining the local knowledge of men resident in the village in which they are to be employed; but

we do desire to modify it materially, and the direction this modification takes is, by placing the village watch more under executive authority than it now is.

"At present the punchayet, which is in other words the representative of the village community, not only appoints the chaukidars, but has authority under the law to decide within specified limits how many chaukidars shall be employed and to fix their salaries. On these three main points the power and authority of the punchayet is curtailed by the present Bill. It is proposed to allow the punchayet to nominate, but the appointment of the village watch will rest in future with the District Magistrate. It is laid down also that the Magistrate and not the punchayet shall determine the number of chaukidars within specified limits. This is a proviso which experience has shown to be very necessary. The law authorises the punchayet now to fix the number of chaukidars, and in practice it has been found that they reduce the number, and the Magistrate has been obliged to interfere to maintain the minimum number of chaukidars prescribed by law. They have done so without any specific legal authority, but it is only in this way that the full number of chaukidars has been maintained. Under the present Bill, the Magistrate is vested with the power he has hitherto informally exercised. Similarly, it is proposed—and this is a point of at least equal importance—that the Magistrate shall fix the salary of the chaukidar. The salary is now fixed by the punchayet, and the tendency is to fix it at a rate so low as to be below the standard of efficiency. *Per contra* there is a provision in the present Bill which may be said to be of a more radical character than anything the present law contemplates. Under the present Act, the punchayet is appointed by the District Magistrate. The Bill, I have in my hand, proposes that under certain conditions the punchayet may be elected by the villagers, introducing thereby the elective principle into villages. Now, Mr. President, this is not a section of the Bill with which I personally have much sympathy. My own view is not in favour of introducing democratic institutions into India, and I do not think that the introduction of the elective principle into villages will be calculated to benefit the villagers in any way. However, it has been thought advisable to leave this section in the Bill for the present, and it is hoped that there may be a discussion in Council, and that public opinion may be elicited, so that the Government may know what the views of others are on the subject. The idea is one which was put forward by the late Police Commission, and the Government are not pledged to it in any way; but if it is found that public opinion, as expressed through this Council, is in favour of

the provision, then the Government will have no objection to allow it to remain.

"For the rest, the changes proposed in the law are more or less of detail. Powers of arrest are given to chaukidars, thus assimilating their powers to those now exercised by the regular Police. An important section is introduced authorising the Magistrate, if the collections by the punchayet are very bad, or if he finds that the chaukidar is imperfectly paid, to appoint a Government Collector of the chaukidari tax by whom the chaukidari rate will be levied and paid to the chaukidar. This is a provision which exists in the present law only, so far that it is within the competency of the punchayet to apply to the Magistrate to appoint a tahsildar. But the Bill authorises the Magistrate under specified conditions to appoint a tahsildar of his own accord.

"And then, lastly, there is a section introduced under which fines imposed on chaukidars are credited to a District Chaukidari Reward Fund, the control of which rests with the Magistrate. At present fines, when realised, are credited to the Village Chaukidari Fund; that is to say, they pass to the punchayet. The Magistrate has no control over them, and the effect is that if the punchayet and the chaukidar work together and are friendly one with the other, no fine whatever can be inflicted on the chaukidar. It is thought desirable that the Magistrate of the district should have the power of inflicting some punishment on chaukidars other than dismissal. The fine will then be credited to a Reward Fund for distribution among deserving chaukidars, a provision which has always been much needed, and is calculated to improve the administration of the Village Police Force.

"The present legislation will not in any way touch Part II of the existing Act, which relates to chakran or service land. That is a very complicated and elaborate matter, which is reserved for further consideration and legislation. The present Bill is introduced simply with the objects, I have described, of strengthening the control of the executive authorities over the village police.

"I have now the honour to introduce the Bill and to move that it be read in Council."

The Motion was put and agreed to.

The Bill was read accordingly.

The HON'BLE MR. COTTON said:—"I now move that the Bill be referred to a Select Committee. I may say that it is the intention of the Government to circulate the Bill widely, and to invite non-official as well as official opinion upon it. I propose to add the name of the Hon'ble Mr. Risley to those on the paper. He was a member of the Police Commission, and is in a position to afford valuable assistance in considering the measure. The Committee to whom I propose to refer the Bill will, therefore, consist of the Hon'ble Sir Henry Harrison, the Hon'ble Mr. Allen, the Hon'ble Mr. Risley, the Hon'ble Babu Gonesh Chunder Chunder and the Mover."

The Motion was put and agreed to.

LICENSED WAREHOUSE AND FIRE-BRIGADE BILL.

The HON'BLE SIR HENRY HARRISON moved for leave to introduce a Bill for the regulation of Warehouses and the maintenance of a Fire-brigade.

He said:—"As I am going to ask your Honour afterwards to suspend the Rules of Business, I need not make any remarks on the Bill at this stage."

The Motion was put and agreed to.

The HON'BLE SIR HENRY HARRISON applied to the President to suspend the Rules of Business to enable him to introduce the Bill, and to move that it be read in Council and referred to a Select Committee.

The HON'BLE THE PRESIDENT having declared the Rules of Business to be suspended—

The HON'BLE SIR HENRY HARRISON said:—"I now beg to introduce the Bill and to move that it be read in Council. The main object of this Bill is, in one word, to relieve the jute industry from bearing the entire cost of the Fire-brigade in Calcutta as it now does. The jute industry has reached this position rather by a process of drift than by any intention on the part of the Legislature, to saddle it with the whole of this charge. As a matter of fact, the Fire-brigade in Calcutta and the establishment of jute warehouses in Calcutta, were almost synchronous. Prior to 1872, there was no Fire-brigade worthy of the name; the Municipality maintained a few hand engines, and whatever they maintained, they paid for. In 1866, when the Municipal Act was amended, the danger arising from jute warehouses, especially from unpressed

jute, was so great that certain sections were introduced to provide for the right of inspecting them. Soon after, in 1871, severe fires broke out in Calcutta, which were distinctly traceable and due to jute warehouses, and upon that the Chamber of Commerce, the Trades Association, the British Indian Association, and several other bodies petitioned the Government to take the matter into their serious consideration and protect the public, and the outcome of that was the first Act of 1872, which imposed fees on jute warehouses varying from Rs. 250 to Rs. 1,000, and at the same time provided for the maintenance of an efficient Fire-brigade, and steam fire-engines were ordered out in that year for the first time. Apparently it was not the intention of the Act that the fees should cover the entire cost of the Fire-brigade, because a tax was imposed on insurance offices at the rate of eight annas on every Rs. 10,000 insured, and it was also provided that the Municipalities of the town and the suburbs should make good any deficiency in the income. But, as a matter of fact, partly, I suppose, owing to the great multiplicity of jute warehouses, and partly owing to the fees having been fixed so high, the income very far exceeded the expenditure, as would be seen by the fact that between 1872 and 1881, the Government made grants from the Fire-brigade Fund of Rs. 40,000 to widen the street opposite the Municipal Office; of Rs. 16,552 as a contribution towards the Lock Hospital; of Rs. 10,000 for improvements in the suburbs, and, lastly, of Rs. 60,000 to help towards the widening of a portion of the Chitpur Road. Thus it came about that, although a small portion may have been due to the tax upon insurances which was not abandoned till 1879, practically the jute industry paid for the whole of the Fire-brigade, and so much more that large funds accrued at the disposal of the Government which were appropriated for beneficial purposes for the town and suburbs. Accordingly in 1879 another Act was passed—one amending Act had already been passed in 1875 which does not bear much upon the present question—in order to reduce the fees. The tax on insurances being no longer required was abandoned, and it was arranged that the Government should fix the rates in accordance with the recommendation of the Commissioners, and, as a matter of fact, the rate was fixed at a sum not exceeding ten per cent. upon the annual valuation of jute warehouses; and a rule was also passed that the town should bear 7-10ths and the suburbs (not Howrah) 3-10ths of the entire cost of the Brigade. However, as the number of jute warehouses went on increasing, and as land was cheaper and sites more available in the suburbs, it very soon appeared that the town warehouses had to be taxed very much more than those in the

suburbs to keep up these proportions. The suburbs met its 3-10ths share with the greatest possible ease, whereas the town had to keep up the rate at its maximum to meet its share. Accordingly in 1883 the Act No. IV, which it is now proposed to repeal by this Bill, was passed—first, to abandon the proportion of 7-10ths and 3-10ths, and to place jute warehouses in the town and the suburbs on the same footing, and instead of having separate Fire-brigades for Howrah and the town and suburbs, as had been done before, to have one Fire-brigade for the whole urban area, for the town and all its environs on both sides of the river, and to introduce the same rule in Howrah as regards fees upon jute warehouses. It was arranged that the inspection of jute warehouses should be vested in the Municipality, as also the collection of the fees, and for this purpose they were allowed to take 20 per cent. of the entire proceeds, and the remaining 80 per cent. were paid to the Commissioner of Police for the maintenance of the Fire-brigade; and, as a matter of fact, these fees, with the receipts from the petroleum fees and from other sources, had as nearly as possible just maintained the Fire-brigade. So that since 1883 it had come to this, that the jute industry no longer paid more than was necessary, but it still paid practically the whole cost of the Fire-brigade of the town and its environs. The Fire-brigade, which is useful, if not often for pucka houses, very much for bustees and huts, has been entirely supported from this one industry alone; for although 'cotton' is included, almost the whole of the receipts come from jute. The Chamber of Commerce represented that this was not fair; that though there was a provision that any deficit should be made good by the Municipality, yet, as a matter of fact, the rate of fees which was levied was sufficient to meet the entire cost of the Fire-brigade, and upon this representation of the Chamber, the Government were evidently satisfied as to the general justice of the protest, and they accordingly appointed a Committee upon which the Chamber, the Police, the Corporation of Calcutta, the Port Commissioners and some others were represented.

"I was one of the members of that Committee, and therefore I am able to speak from personal knowledge of its proceedings. It was found that all were unanimous that it was not just to expect that the whole cost of the Fire-brigade should be paid by one industry. But then two separate principles claimed recognition. One principle was, that though the jute industry ought not to bear the whole cost, it was sound principle that warehouses for hazardous goods, which, combined with huts and bustees, were the chief sources

[*Sir Henry Harrison.*]

of fires, should pay more than the ordinary sum payable for substantial pucka houses where the risk of fires was very small. The other principle put before us was, as a matter of fact, that all such distinctions, however justifiable in principle, were difficult to carry out in equity and practice, and therefore should be abandoned. Both in Bombay and in England it has been recognised as the simplest and best course to have a uniform taxation on all classes of property. In Bombay, there is a tax of $\frac{3}{4}$ per cent. on the valuation for the Fire-brigade. In England, Fire-brigades were generally supported in the same way. But the Committee thought that, in the first place, such a principle was not nearly so applicable to India as to England, because in Calcutta there was scarcely any risk of fire at all from pucka houses in which fires were so seldom lighted in the main building; whereas, on the other hand, we have much more risk from warehouses in Calcutta. In the second place, the Committee thought that, although they might not have been willing to introduce it for the first time, a distinction between hazardous and non-hazardous goods which had been recognised for 20 years ought not to be needlessly abandoned. They thought that there was no reason to pass suddenly from one extreme to another, and consequently they adopted the middle course of continuing to place considerable extra taxation on hazardous goods, and at the same time to make the whole community contribute towards the cost of the Fire-brigade.

"On looking about also they saw there was another source of revenue which clearly ought to be utilised. In the town of Calcutta dangerous and offensive trades pay, as is reasonable, extra taxation in consequence of their character, such as depôts of wood, hay, straw, coal and rags which, barring the latter, cannot be said to be offensive but dangerous, and it seemed to them reasonable that their inflammability should be recognised as a source of income towards meeting the cost of the Fire-brigade. Consequently, the Committee thought that the proceeds of these licenses, which in the Municipality were taken over and above the ordinary trade license, ought to be added to the Fire-brigade Fund, and ought to form one source of its revenue.

"Then came the question of apportionment—a very difficult matter to deal with; because it is obvious that so many indirect considerations enter into what is a fair apportionment, that it is hardly possible to do more than adopt a general approximate apportionment. As regards this, the Committee were at first inclined to think that jute and cotton ought to pay 50 per cent., and depôts of wood, hay, straw, &c., 20 per cent. On further consideration and

further correspondence with the Chamber, the proposals made were of this kind. In the first place, that the law was defective at stopping at unpressed and unscrewed jute. In the law, as it now stands, which the Bill which is now introduced will repeal, jute and cotton meant respectively jute and cotton not pressed or screwed for shipment. Now it so happened that one of the largest and worst fires recently occurred in a warehouse which had no unscrewed or unpressed jute; and it was asked why should these, which were obviously hazardous goods, though not in the same degree, be exempted altogether. In the same way it was pointed out that all gunnies were extremely dangerous, and so were rope manufactories; and, therefore, the Chamber contended that the area of hazardous goods ought to be increased. Eventually it was agreed that 20 per cent. was too much to take from depôts of wood, hay, straw, coal and rags, and it was reduced to 10 per cent., and, on the other hand, the percentage to be paid by hazardous goods of the nature of warehouses was extended to 60 per cent. That left 30 per cent. to be met, and the question was considered whether the tax should not be re-imposed upon insurance offices. But looking at the fact that the tax would be paid by the insurers who may be taxed over again, and on various other grounds, the Committee did not recommend that this should be adopted. The Bill, therefore, proceeds on these lines; 60 per cent. of the cost to be imposed on hazardous warehouses, but what is to be exactly included in this has been left somewhat undetermined in the Bill, because the representatives of the Chamber proposed to include a very large number of goods. The Council are probably aware that there is a separate Act for the regulation of petroleum, and that fees are already paid by it for the support of the Fire-brigade. Of course it is not pretended that godowns used for retail trade should be touched. There is a section of the Bill which relates to hazardous goods, but whether all these ought to be included in it or not is a matter upon which the Committee did not make any definite recommendation, because further discussion of them appeared to be infructuous except by the authority which would have the power to decide the point. They thought it best, therefore, to leave it to the Council to determine precisely what should be included. The Bill goes so far as to include, as liable to pay under the hazardous schedule, all kinds of jute, pressed and unpressed, and warehoused for storage, and all store-houses for oil other than petroleum or ropes or rope material or any other substance or thing for the time being subject to the operation of this Act. The system on which it is proposed to work the

[*Sir Henry Harrison.*]

Act is this: the Commissioner of Police will prepare a budget to show the whole expenditure on the Fire-brigade, on the receipt side of which he shall show all the various receipts for licenses for fireworks, petroleum and other sources. This, of course, will show a deficit which will be met to the extent of 60 per cent. by a tax on warehouses under the Act, and of 40 per cent. on the Municipalities. The reason why 40 per cent. is to be taken from the Municipalities is this, that, under the present law, the Municipalities have the entire control of the license fees from dangerous goods, such as wood, hay, straw, coal and rags, and it was not thought desirable to fetter their discretion more than at present; it was therefore left to them to decide what fee to impose. At present they do get nearly ten per cent. of the cost of the Fire-brigade, but it is open to them, as far as the law allows, to increase or decrease these fees, and then make good the remainder. If they keep the fees as they are now actually collected, the amount which they will have to contribute from other funds will be about 30 per cent. These fees are left in their possession and control, and all the Government will expect from them will be a contribution of 40 per cent. The other 60 per cent. will be raised in a somewhat tentative manner by licenses on hazardous warehouses. Estimates will have to be framed of the assessed value of the properties, and a percentage fixed. If in the first year it proves too much, in the next year the Government will reduce it. Anyhow, it will be the duty of the Government to work this percentage so that it practically provides for the share which falls on these industries. One more change the law introduces, mainly in the interests of economy. It is to transfer the inspection of these warehouses from the Municipality to the Police. The Police have now the inspection of all petroleum godowns; they have facilities in their present establishment far greater than the Municipalities have, who have to maintain a special establishment for the purpose.

"The Police have an organization which already enables them to carry out inspections, and no doubt they will carry it out at a much cheaper cost than the 15 per cent. which is estimated to be the cost to the Municipality. The Municipality will continue to grant licenses at the rate at which the Government may lay down, and they will collect the fees, and after appropriating 5 per cent., will make over the rest to the Government. As regards the charge of the Fire-brigade, the question was raised whether any alteration should be made in its management; but the Committee, and the Government in accordance with their views, considered that the management of the Fire-brigade has been highly

satisfactory. I speak with some personal knowledge, and I think it is very well managed. Though it was originally under the Corporation, it was found convenient as early as 1872 to make over the management to the Commissioner of Police. The Act of 1879 sanctioned this change, and that arrangement has remained in force ever since. But as regards economy and efficiency, it is much better managed than in Bombay, where a $\frac{3}{4}$th per cent. rate is levied. There the Fire-brigade is in the hands of the Corporation, and the expenses are out of all proportion to the collection of the rates. The Police furnishes a very efficient body of firemen, who are only paid on the occurrence of fires, which is a far more economical arrangement; and it is a great advantage that the same men who have the management of the brigade should, in case of necessity, have Police powers also. Therefore the Act leaves the management and control of the Fire-brigade untouched. These are the general outlines of the Bill under consideration. I now beg leave to introduce it and to move that it be read in Council."

The Motion was put and agreed to.

The Bill was read accordingly.

The HON'BLE SIR HENRY HARRISON also moved that the Bill be referred to a Select Committee consisting of the Hon'ble the Officiating Advocate-General, the Hon'ble Mr. Wallis, the Hon'ble Shahzada Mahommed Furrokh Shah and the Mover.

The Motion was put and agreed to.

The Council adjourned *sine die*.

E. W. ORMOND,

Offg. Assistant Secretary to the Government of Bengal,

Legislative Department.

CALCUTTA;
The 28th April, 1892.

Reg. No. 910G—300—9-5-92.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap 67.

THE Council met at the Council Chamber on Saturday, the 2nd July, 1892.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The HON'BLE J. T. WOODROFFE, *Offg. Advocate-General*.

The HON'BLE T. T. ALLEN.

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE J. LAMBERT, C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SINGH BAHADUR, K.C.I.E.

The HON'BLE GONESH CHUNDER CHUNDER.

NEW MEMBER.

The HON'BLE MR. LAMBERT took his seat in Council.

VILLAGE CHAUKIDARI ACT, 1870, AMENDMENT BILL.

The HON'BLE MR. COTTON moved that the Hon'ble Mr. Lambert be added to the Select Committee on the Bill to further amend the Village Chaukidari Act, 1870.

The Motion was put and agreed to.

LICENSED WAREHOUSE AND FIRE-BRIGADE BILL.

The HON'BLE MR. COTTON moved that the Hon'ble Mr. Lambert be added to the Select Committee on the Bill for the regulation of Warehouses and the maintenance of a Fire-brigade.

The Motion was put and agreed to.

BENGAL MUNICIPAL ACT, 1884, AMENDMENT BILL.

The HON'BLE MR. RISLEY moved for leave to introduce a Bill to amend the Bengal Municipal Act, 1884.

He said:—"Mr. President, in moving for leave to introduce a Bill to amend the Bengal Municipal Act, III of 1884, I will endeavour to explain, as briefly as possible, why it has been thought necessary to amend that Act, and in what manner and on what lines the amending Bill has been drawn up. The first draft was prepared in January 1892, and was circulated to all Commissioners and Collectors of districts, with the request that they would consult all Chairmen of Municipalities and Municipal Commissioners as to its provisions. In reply to this circular, we have received a great mass of official and non-official opinion, and have taken advantage of the suggestions thus made to revise the draft in several important details. The Bill which I now ask leave to introduce is, I regret to say, rather a long one. It contains 57 sections, and deals with a number of details through which the Council would find it tedious to follow me. All of those points are explained section by section in the Statement of Objects and Reasons which, with the Bill itself, will I trust shortly be in the hands of Honourable Members. On the present occasion I do not propose to trouble the Council with anything more formidable than a running commentary on the Statement of Objects and Reasons, taking up and explaining the more important sections at greater length and in more popular language than would be appropriate to that *quasi*-legal document.

"In the first place, I have to answer the obvious question, why should the Act be amended at all? To change the law is no light matter at any time, least of all when the statute to be dealt with extends to 367 sections, and is concerned with the mass of minute administrative detail of which municipal business is everywhere made up. In the present instance, the reasons for amendment are, I submit, convincing. In a judgment delivered on the 24th March, 1891, a Divisional Bench of the Calcutta High Court held on technical grounds that none of the provisions of Part VI of the present Municipal Act were in force in the town of Kushtea. The Hon'ble Judges added that so far as they could see none of those provisions were in force in any municipality in Bengal, unless they had been specially extended under Act III of 1884. They considered the matter to be of such importance that they directed a copy to be sent to the Government of Bengal. Now, Part VI contains a number of what are called

special regulations dealing with privies, drains and excavations, obstructions and encroachments on roads, building regulations, sanitary measures affecting blocks of huts, sale of food, drink and drugs, burial and burning grounds, and certain offensive and dangerous trades, such as tanneries, slaughter-houses, kerosine depôts, and the like. To all or most municipalities of any standing the corresponding Sanitary sections, which formed Part VII of Bengal Act V of 1876, the old Municipal Act, had long ago been extended by notification, and the legislators who framed Act III of 1884 took infinite pains to provide in section 2 of the Act that every rule, bye-law, notification and assessment and other work done under the old Act should be valid under the new Act. The Law Officers of the Bengal Government held that this section was amply sufficient to maintain in force the notification which extended this portion of the old Act. The High Court judgment, however, overruled this opinion, and held that the framers of the new Act had not succeeded in carrying out their obvious intention by the words they used. The Honourable Judges thus created a sort of vacuum in respect of these essential provisions. To fill this vacuum two courses were open—a short and simple one, and a long and cumbrous one. The simplest one was to amend the Act by using words so clear and definite that no Court could hold they did not carry out the intention of the Government. The alternative would have been to issue fresh notifications under the existing Act for all the municipalities affected by the judgment, and thus to put things straight without any change in the law. But in order to attain this end, the Commissioners of each municipality concerned would have to convene a special meeting, and pass a Resolution applying to the Government for the extension of the Part in question. The Local Government would thereupon make an order accordingly. This order would have to be published in the *Calcutta Gazette*, and within fifteen days of such publication to be posted up and published by beat of drum in the municipalities concerned, and the Commissioners would have to fix a date on which it should take effect. Having regard to the amount of trouble and correspondence that would have been caused by setting this complicated machinery in action all over the country, it was thought that the simplest means of attaining the end in view was also likely to be the best, and it was accordingly decided to amend the Act.

"There were other reasons for adopting this solution of the difficulty. In the eight years during which Act III of 1884 has been in force, municipal administration has developed in several directions, and is no longer the simple

matter that it was. All over the world the Goddess of Health, the newly-born science of sanitation, is beginning to assert herself, and is laying every day heavier burthens on those who are responsible for the management of towns. Like the Sibyl of the Roman legend, she constantly raises her demands, but unlike her, I regret to say, she shows no disposition to burn any of her books. On the contrary, the mass of sanitary literature is continually growing, and very dreary literature it is. Well, as I said, this movement in favour of sanitation is going on everywhere; and Bengal, which people in Europe are apt to look upon as a centre for the manufacture and distribution of cholera, cannot expect to stand aloof from it. Our municipalities have in the main—*longo intervallo* it may be—to follow the lead of municipal authorities in England, who, I need haraly say, are ruled with a rod of iron by the sanitarians of the Local Government Board. Looked at from this point of view—from the standpoint of modern sanitary notions—it must be admitted that the Act of 1884 is rather primitive. An analysis of that Act will show that it contains provisions belonging to two different types, one may almost say two different eras. What may be called its constitutional provisions—the sections dealing with election and so forth—are very advanced and modern. They were introduced in 1884 with the current of new ideas then prevailing. But its sanitary provisions are comparatively antiquated; they date for the most part from 1876, or even earlier than that; they belong to the stone age of municipal legislation.

"Now, in order to enable our municipalities to march with the times and to meet those enlarged demands of the Goddess of Health which I have referred to, it becomes necessary, in the first place, to enlarge their powers. In drafting provisions with this object, we have been mainly concerned with the duty of altering any item in which our own Act has been proved to be inefficient or to operate very narrowly; but as to the form in which our emendations are recast, we have taken as an example the most modern piece of Indian municipal legislation—the Punjab Municipal Act of 1891. That, I submit, is the natural and the right thing to do. I remember having seen some criticism on the Bill, which reflected on our action in this respect, and said or implied—I cannot recall the exact words—that in taking a Punjab Act as our model we were trying an advanced Province by the standard of a backward Province, and so forth. That is a complete mistake. Whether the Punjab is more or less advanced than Bengal in the essential characteristic of city life would be hard to decide, but it may safely be asserted that there is no such difference as to

lead the legislature to provide the Punjab with a rougher and less perfect instrument for conducting Municipal government than should be provided for Bengal, and, as a matter of fact, a perusal of the Punjab Act will show that its clauses embody experience gathered from all Provinces, and are, or were, till the present Bill was drafted, the most advanced specimen of legislation on the subject. In referring to the Punjab Act, therefore, as a model to be followed in shaping the municipal law of the growing towns of Bengal, we are simply referring to the best model that is available in India. We shall give our municipalities the opportunity of adopting the legal provisions which are believed to be suitable for the most highly developed type of an Asiatic town, which has to be swept and garnished in accordance with Western sanitary ideas adapted to Eastern conditions. It will rest with the Commissioners to apply these provisions according to their lights.

"I am not at all prepared to say that the Bill which is to be laid before the Council exhausts the possible applications of this principle. We have borrowed and adapted a good deal from the Punjab Act, that is to say, from the conduct and experience of all India, as well as from examples of shortcomings at home. It will be for the Select Committee and for public opinion to say whether more should not be borrowed from that experience, or from the lessons taught by the working of the existing Act in Bengal. I will sketch briefly the main features of the changes proposed. It has on several occasions been brought to the notice of Government that the existing building regulations are inadequate and unsatisfactory, and that they do not confer sufficient power on the Municipal Commissioners. The sections adopted from the Punjab Act seem to meet what is a real want in many Bengal towns. It is a matter for regret that the criticisms received on these sections do not go into their possible working as minutely as might have been wished, and I must repeat here the hope expressed in the circular letter issued with the first draft of the Bill, that the provisions now suggested, which have meanwhile undergone some revision, will receive careful examination from all Municipal Commissioners. To one form of criticism I wish to say a word of reply. It is alleged, in curious contrast to the opposite line of argument already noticed, that these sections are too advanced for Bengal towns and will not be brought into operation. Now it is no doubt the case that what passes for a town in Bengal is usually a rather mixed kind of product—half town, half village. But almost all Bengal towns have grown up on the nucleus of what

is frequently called a *chauk*—a street or group of streets of closely packed masonry buildings—and as time goes on the tendency is for the *chauk* to expand and for masonry houses to multiply in other parts of the town. For this *chauk* and its precincts the provisions in question are already suitable and necessary, and the area of their application will go on constantly expanding.

"Another useful provision, which has been adapted from the Bengal Local Self-Government Act, is section 14, which enables Municipalities to combine with each other, and with other local bodies, such as District Boards, Local Boards and Cantonment Committees, for any purpose in which they are jointly interested. Such purpose might either be a matter of every-day administration, like the registration of carts or the disposal of rubbish, or might be a larger scheme, such as a project for water-supply or drainage. I believe that the practical advantages derivable from this section will be illustrated, as soon as the Bill becomes law, in the groups of Suburban Municipalities on either bank of the Hooghly. These Municipalities have long suffered from the want of pure water and good drainage; they have experienced serious outbreaks of cholera; they have felt the more deadly, though less sudden, ravages of malarial fever, and yet through want of the requisite legal machinery they have been unable to combine to carry out the only measures likely to relieve their sufferings.

"In the same area—the suburban area lying round about Calcutta and Howrah—the crowded state of the huts used as lodging-houses by the poorer classes, particularly by day-labourers and mill operatives, has been found to be a source of danger to the public health. A section has therefore been inserted empowering the Commissioners to prevent overcrowding in such lodging-houses, and to enforce provision for a proper water-supply, for latrine accommodation, and for the disposal of refuse.

"Another section, framed with a sanitary object in view, enables the Commissioners by public notice to prohibit the use of the water in any well, tank, or other place which they consider likely to engender or cause the spread of any dangerous disease. This section has been received with almost unanimous approval, and is objected to by only one officer on the ground that it is contrary to the ordinary principles of legislation to punish a man for doing that which can only harm himself. This, however, seems to miss the point, both of this particular provision and of most modern sanitary legislation. All prohibitions,

such as that now in question, proceed on the assumption that the consequences of the action prohibited are not limited to the individual who does it, but extend also to his neighbours, and it is this assumption alone that justifies interference. In fact the section empowering the Commissioners to stop people using water, the use of which may spread disease, rests on exactly the same principle as certain other sections enabling them to control the storage of kerosine and inflammable oils, and to search for oil stored in contravention of such orders. In both cases the act of an individual may do injury to his neighbours. He drinks bad water and gets a disease, which other people catch; he stores kerosine carelessly; his house takes fire, and the fire spreads to the houses in the same street. In either case the law intervenes to save others from the consequences of his neglect.

"The important question of the extinction and prevention of fire—a matter which comes home with considerable force to the residents of most Bengal towns—is disposed of by Act III of 1884 in half-a-dozen words. Section 69 enables the Commissioners to maintain a fire-brigade: that is all. Of the powers of the members of the fire-brigade and of the possible liabilities arising from their action nothing is said, nor does there appear to be any power taken in the Act to fill this gap in its provisions by rules or bye-laws. The draft sections on this subject which have been adapted from the Punjab Act have been received with general approval by officials and Municipal Commissioners. The only adverse opinion is that of a single official who thinks that the police could deal with the fires more efficiently, the cost of the necessary implements being paid by the municipality. This officer adds that his experience of municipal fire-engines is that they are either out of order when a fire occurs, or arrive too late to be of any use, and suggests that the question might be better dealt with by recasting the Calcutta Fire-Brigade Act. There is no doubt an element of truth in what is said of the efficiency of Mofussil Fire-Brigades. I knew of a Fire-Brigade in a certain municipality which was superbly organized, so far at least as outward appearances were concerned. All the members of the force had gorgeous uniforms, they were commanded by a Major-General, they had a Lieutenant-Colonel, a Major, and a Captain, and the people of the next District, who looked on with envy, said the Brigade consisted of nothing but officers. They used to drill regularly, and work their engines at every drill, but the place was very dry, and there was not water enough for ordinary drills. So they did without. When at last their opportunity came, and a fire broke out in the

bazar, the engines were in excellent time, and the firemen were all there; they pumped away with extreme vigour but without the smallest result; the hose though swollen to alarming dimensions produced the feeblest dribble, hardly enough to quench a fire in Lilliput. After a bit the hose burst, and scattered in all directions a huge family of rats of all sizes who had found it a comfortable home in its dry state, but had been drowned incontinently directly the pumping began; their bodies had choked the nozzle, and the pressure had burst the hose. That illustrates one aspect of the Fire-Brigade question, an aspect which I hope is not likely to recur. At the same time, it does not follow that the suggestion to recast the Calcutta Fire-Brigade Act for Mofussil use is a practicable suggestion. I trust that, after considering the draft sections, which have been adapted from the Punjab Municipal Act, the Council will be of opinion that they offer a reasonable solution of the question.

"These are the chief among what may be called the executive or administrative provisions of the Bill. They add materially to the powers of the Commissioners, and may perhaps tend indirectly to enhance their financial liabilities. In any case, whether these sections have that effect or not, there can be no question that the ideas of the day on the subject of Municipal administration make generally for higher expenditure. Municipalities are required to do more, and to spend more money on doing it, than was the case twenty years ago. Larger establishments, more expensive plant, more elaborate methods are the order of the day. How are all these things to be provided? Fresh forms of Municipal taxation are, I submit, hardly to be thought of, and no attempts in this direction will be found in the Bill. But what may be done and, I submit, ought to be done without delay is to make the existing methods of taxation more productive. In many, if not most, Municipalities the work of assessment, at no time an easy matter, has become too difficult and too complicated for the Commissioners to deal with adequately. We have got to the point which was reached in England in 1836, when it was found that the system under which the Vestry appointed members to form a Committee and revise the rate and the valuation on which it was levied 'seldom produced a satisfactory result to the parish'. The Parochial Assessment Act was passed expressly with the object of redressing 'the irregular and unequal mode in which the poor-rate (on which English municipal taxation is based) was assessed in a great part of the country,' and to remedy the many abuses and irregularities which prevailed in the imposition of

this tax.' These words, taken from a standard English work on parochial assessment, are, I submit, entirely applicable to the state of things which prevails in Bengal Municipalities. The system usually adopted of dividing the area to be dealt with among a number of Commissioners is bound to bring about an unequal incidence of taxation, and the Government has knowledge of numerous cases where it has done so. The fact is, that whether the tax on holdings or the tax on persons is in force, it is a very difficult task to make a good assessment of a Bengal Municipality, and assuredly the worst possible means of doing it is to put it in commission, as it were, among a number of gentlemen not specially qualified for the purpose. No one would dream of making the road cess assessment of a district on such a system, but as between cess valuations and Municipal valuations, I am not at all sure that the former is not the easier of the two. The data for rating the cess are obtained by fixed rules, and under legal sanction, they are on the whole moderately certain, and once the returns have been got in and verified, the rest of the process is mainly mechanical. In municipal matters, on the other hand, everything is uncertain: the law gives the vaguest of rules, and you need to be something of an expert to apply those to the facts in hand. How is a man with no special experience of such matters to ascertain the annual value of a particular holding which does not happen to be let, or to estimate the income—for that is what the personal tax really comes to—of so many dwellers in so many mud huts? Then consider the influences that are brought to bear, the constant solicitations the unfortunate assessing Commissioner is subjected to, frequently by his own constituents, if he is assessing his own ward, the closely personal character of the whole thing, the pressure, the intrigue, the liability to error all round, and I really think it is wonderful that Municipal assessments are not much worse than they are.

"The flaws in our present system being then much the same as those which were observed in the English system fifty years ago, we propose to adopt the same remedy. The new assessment sections, which have been drafted as far as possible on the lines of the English law, provide that all assessments shall be made by a salaried assessor appointed by the Municipal Commissioners and working under their authority. The Commissioners will fix the rate at which taxation shall be levied, and the assessor will determine the valuation. That is to say, where the tax on holdings is in force, the assessor will determine the annual value of each holding, and where the tax on persons prevails, he will fix

the assessable income of each person occupying a holding. Appeals from the assessor's decisions will be heard by three Municipal Commissioners appointed at a meeting. Provisions have been added, borrowed from the English law on the subject of parochial rating, which entitle the assessor to be heard, or to state his opinion, in every appeal, and lay down that the valuation made, or opinion stated by him, shall be deemed to be right unless it is proved to be wrong.

"I venture to hope that these provisions, which differ materially from those embodied in the draft Bill, will be favourably received by most municipal bodies. They will relieve the Commissioners of the details of what is generally admitted to be an irksome and unpleasant duty, without depriving them of the executive control and appellate jurisdiction which have hitherto belonged to them. They will also, I believe, equalise the burthen of municipal taxation by distributing it more fairly, while by getting full value out of the assessments they will add materially to the income available for municipal purposes. The idea is not a new one. Under the former law, and, I believe, also under this, assessments of complete municipalities have occasionally been made by the Chairman or Vice-Chairman, who did the work of a salaried assessor, and such assessments are admitted to have been the best on record. In recent times and in some Municipalities salaried assessors have also been employed, I understand, with considerable success, though their status under the present law is an uncertain one.

"I have only to add that power has been taken to regulate the conditions of appointment by rule so as to keep the cost to the Municipalities as low as possible. It is, of course, not intended that every Municipality should have a separate assessor. One assessor will be able to do the work of a number of Municipalities, and will be paid by contributions in proportion to the income assessed, or on some such system. But, obviously, the area to which he will be appointed may differ in different parts of the country. In some places, one assessor to a division will be sufficient; in others, like the 24-Parganas, only experience will show whether one man can do the work of a district. In any case it is believed that the cost to individual Municipalities will be trifling, and will be amply recouped by the increased income which is likely to be realised.

"Under the head of Water-supply certain amendments have been introduced, based partly on the North-Western Provinces Water-supply Act of 1891, and partly on some valuable suggestions made by Rai Nalinaksha

Basu Bahadur, Chairman of the Burdwan Municipality, whose opinion on this subject carries very great weight. In section 279 of the Act, we propose to raise the percentage on annual value from 6 to 7½ per cent., to abolish the distinction between streets supplied with water and streets not supplied, and to substitute for it provisions modelled on those of section 33 of the North-Western Provinces Water-Works Act of 1891, which exempts from water-rate houses or lands situated beyond a certain radius to be fixed by the Local Government for each Municipality from the nearest stand-pipe; land used exclusively for agriculture; lands or houses specially exempted by the Municipality with the approval of Government; and any house unoccupied for three consecutive months. At the same gentleman's suggestion it is also proposed to limit the right to house connexions accorded in section 290 (which was taken from the Calcutta Municipal Act of 1876) by substituting for it a section based on section 158 of the present Calcutta Municipal Act. Experience has shown that unrestricted house-connexions mean an incalculable waste of water, and that the grant of this privilege may so raise the cost of particular projects for water-supply as to place them wholly beyond the means of the municipalities concerned. Here, as in so many administrative schemes, one is reminded of the French saying, for which oddly enough we have no equivalent in English, *le mieux est toujours l'ennemi du bien.* People want too much and they get nothing. Surely pure water without house connexions is better than impure water, and a law which is intended to apply to places of very various circumstances should recognise the fact that all of them cannot afford the same standard of conveniences.

"Finally, I have a few words to say about three sections, regarding which the intentions of the Government seem to have been somewhat misunderstood. The first of these is section 3, amending section 9 of the present Act. Section 9 of the Act runs as follows:—

Variation of limits and power to withdraw from operation of Act.

'The Local Government may, on the recommendation of the Commissioners at a meeting, by a like notification, at any time vary the limits of any Municipality or sub-divide any Municipality into two or more Municipalities, or withdraw any town, village or land from the operation of this Act, or alter the number of the Commissioners of such Municipality.'

"The condition about the recommendation of the Commissioners was introduced in 1884, no special reason being given. In practice the change has been found inconvenient. Several cases have been reported in which purely rural tracts

have been included within the boundaries of municipalities, and enquiry has shown that in these cases the tests prescribed by section 10 of the Act for determining whether a particular place can properly be made a Municipality were almost wholly inapplicable. Whether a mistake was made in the first instance, or whether the local circumstances have changed, so that what may have looked like an urban area some years ago has now fallen back into a more primitive condition, it is impossible to say. But there can be no question as to the fact that the jurisdiction of several of the smaller municipalities requires revision in the direction indicated, and that the clause requiring the Commissioners themselves to take the initiative is a serious obstacle to such revision. It is natural enough that the Commissioners should be reluctant to recommend a course, the immediate result of which would be to reduce their income without producing a corresponding decrease in their expenditure, for the rural portions of a municipality are necessarily those upon which least municipal money is spent, and the allegation of the persons who are aggrieved by the retention of such places within the municipality is that no money is spent on them at all. In justice to the poorer classes—raiyats, agricultural labourers, fishermen, and the like—from whom these protests have been received, it is essential that some change in the law should be made. In the first draft of the Bill it was proposed simply to strike out the words 'on the recommendation of the Commissioners at a meeting,' and thus to leave this matter, and the other cognate points touched upon in the section, to the discretion of the Government. A section has now been introduced, modelled on sections 194 and 195 of the Punjab Act, which provides that, when the Government intends to do any of the things which it is empowered to do by section 9, it shall notify its intention in the Gazette locally, and shall receive and consider objections. That, I submit, is a fair solution of the difficulty. It reserves to the Government the power which is reserved to it in every other province, and which in England is exercised by the Local Government Board, and it gives all classes of residents full opportunity of making their wishes felt. I may add that a defect in the existing Act has been cured by taking power to unite two or more Municipalities into one.

"There is another proposal which may be briefly noticed. Under the Act as it stands, the original election of a Chairman requires the sanction of Government, but by a curious omission, an *ad interim* election under section 27 does not. It has been thought necessary to supply this omission by providing that

an intermediate election of a Chairman shall be subject to the same conditions as an original election. Again, under the present law, the election of a Vice-Chairman does not need the approval of Government, and it is proposed in future to impose this condition. The reason for making the change is that the duties of Vice-Chairman are almost as important as those of the Chairman, and it seems advisable that Government should be placed in a position to exercise an effective influence in the matter. This is more particularly necessary in certain towns, where local magnates, men of old family and high position in the neighbourhood, have offered themselves for election to the post of Chairman. It is in many ways a great advantage to the municipalities concerned to have such men at their head, but as a rule they cannot be expected to exercise the same amount of minute personal supervision as an ordinary Chairman; and in such cases therefore the duties of the Vice-Chairman come to be of special importance and require to be subject to special control.

"One section more, and I shall have done. Under the present law, the Government has power to appoint the Chairman in those Municipalities which are entered in the second schedule. It can remove Municipalities from that schedule, and thereby surrender the right of appointing the Chairman, but it cannot, as the law now stands, add the name of a Municipality to that schedule, unless it is newly created, or has been superseded under section 65. The Bill proposes to amend section 23, so as to take this power. Opinions on the subject are numerically very even. About 58 opinions are in favour of the change, and about 60 are against it. The 58 consists of 38 officials and 20 Municipalities: the 60 is made up of 4 officials and 58 Municipalities. We may say then, roughly, that all the officials are for it, and three-fourths of the Municipalities are against it. Further analysis would be tedious. It is clear, however, from the opinions of the Municipalities which are opposed to the change, that they contemplate the section being used in a manner quite alien to the spirit in which it has been conceived. They seem to think that Government will at once set to work, and get rid of non-official Chairmen all over the country.

"I need hardly assure the Council that nothing could be further from the intentions of Government than to do anything of the kind. A non-official Chairman, who is even moderately efficient, is far too valuable to the Government for there to be any question of replacing him by an official. That of itself is a sufficient answer to the apprehensions of the Municipal dissentients.

But I will go further still. I wish to make it absolutely plain that the change in this section proceeds, not from any wish to make sweeping changes, but from the desire to be provided with the means of meeting the happily unfrequent case of municipal mal-administration by some less stringent method than that of superseding the Commissioners altogether. Every now and then it happens in Bengal, as it happens in England, and in other countries, where Local Government by corporations is in force, that a municipality gets its affairs into a regular mess. These things happen gradually; no one can foresee exactly when and where they are going to happen, and they are possibly not the fault of the body of Commissioners actually in power when the matter comes to notice. Something has to be done, and the obvious and reasonable thing to do is to give the Commissioners an administrative expert in the form of an official Chairman to put their affairs straight. A *deus ex machina* is wanted for a particular emergency, and the Government ought to have the power to provide one. For the reasons I have already mentioned, it is not likely to abuse the power. An official Chairman is an expensive luxury where the Municipalities cannot be required to contribute to his pay. The interest of the Government, its solid, financial interest, is all on the side of having non-official Chairmen. If it pays an expensive official to do its work, it likes to have full value for its money; it wants all his time, and nothing is further from its intentions than to give half, or a quarter, or even a smaller fraction of it to the Local Municipality.

"These, Sir, I think may fairly be described as the most important sections of the Bill, which I ask leave to introduce."

The Motion was put and agreed to.

The Council adjourned to Saturday, the 16th July, 1892.

E. W. ORMOND,

CALCUTTA; *Offg. Assistant Secretary to the Govt. of Bengal,*
The 5th July, 1892. *Legislative Department.*

Reg. No. 264C—300—11-7-92.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 16th July, 1892.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE J. T. WOODROFFE, *Offg. Advocate-General.*

The HON'BLE T. T. ALLEN.

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE J. LAMBERT, C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJA SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

The HON'BLE GONESH CHUNDER CHUNDER.

LICENSED WAREHOUSE AND FIRE-BRIGADE BILL.

THE Hon'ble the President moved that the Hon'ble MR. COTTON be added to the Select Committee on the Bill for the regulation of Warehouses and the maintenance of a Fire-brigade.

The Motion was put and agreed to.

BENGAL MUNICIPAL ACT, 1884, AMENDMENT BILL.

THE HON'BLE MR. RISLEY introduced the Bill to amend the Bengal Municipal Act, 1884, and moved that it be read in Council.

He said:—"I may take this opportunity of supplying an omission in the statement I made to the Council the other day. I should, perhaps,

have mentioned that in the original Bill, the Bill which was circulated early in January last, there was a provision for raising the municipal franchise from Rs. 3, as it stands in the Act at present, to Rs. 5. The provision in the Act is that the franchise may be reduced by Government by rule, and, as a matter of fact, in almost every mufassal municipality it does now stand at Rs. 1-8, and the maximum to which it can be raised under the present Bill is Rs. 3. It was proposed to put that maximum up to Rs. 5. When the proposal was originally made and embodied in the Bill in January last, it was made necessarily without precise statistics showing exactly what numbers would be affected by this change. While the Bill was under consideration, statistics were collected, and recently I had the opportunity of going into the matter carefully, and the result of those statistics stated generally is to show that a franchise of Rs. 5 would reduce the numbers of voters in almost every municipality in Bengal to an extremely small number. It would in fact give municipalities a constitution of such an oligarchical character that it could hardly be characterised as an elective constitution at all. The number of voters, in relation to the number of assessees, would form so microscopic a minority that the change would have been virtually a *reductio ad absurdum* of the elective system. There are only four towns in Bengal to which this remark would not apply, namely, Burdwan, Howrah, Patna, and I think Dacca. So that it came to this that if this new section to raise the franchise to Rs 5 were introduced, it would affect four towns only and no more. Under these circumstances, and considering the absurd result the proposed change would produce in other municipalities, it has been thought best to omit the section altogether, and to leave the franchise as it stands."

The Motion was put and agreed to.

The Bill was read accordingly.

The HON'BLE MR. RISLEY also applied to the President to suspend the Rules for the Conduct of Business.

The President having declared the Rules suspended—

The HON'BLE MR. RISLEY also moved that the Bill be referred to a Select Committee consisting of the Hon'ble the Officiating Advocate-General, the

Hon'ble Mr. Allen, the Hon'ble Dr. Mahendra Lal Sircar, the Hon'ble Babu Gonesh Chunder Chunder and the Mover.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 23rd July, 1892.

CALCUTTA;
The 18th July, 1892.

E. W. ORMOND,
Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 3260—300—22-7-92.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 23rd July, 1892.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE J. T. WOODROFFE, *Offg. Advocate-General.*

The HON'BLE T. T. ALLEN.

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE J. LAMBERT, C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJA SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

The HON'BLE GONESH CHUNDER CHUNDER.

VILLAGE CHAUKIDARI ACT, 1870, AMENDMENT BILL.

THE HON'BLE MR. COTTON presented the Report of the Select Committee on the Bill to further amend the Village Chaukidari Act, 1870, and moved that the Report be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered in the form recommended by the Select Committee.

He said:—"The Committee have altered the Bill which was introduced into Council in certain respects, and it will therefore be more appropriate to consider the Bill as it has been amended by the Committee in preference to the Bill which was originally referred to them. With reference to the considerable number of amendments in the Bill, of which notice has been given, I think it will be more convenient to the Council if I do not occupy their time at present with any observations on the Report of the Select Committee, but reserve what I have to say to the time when the several amendments come before us for discussion; to leave, in fact, hon'ble members who have proposed amendments to move their amendments and to support them, and then to leave me, if necessary, to reply or make such observations as seem proper on each amendment."

The Motions were put and agreed to.

The HON'BLE MR. WOODROFFE moved that, for the words "District Magistrate," wheresoever they occur in the Bill, the words "Magistrate of the district" be substituted.

He said:—"The first amendment in my name is, so to speak, of a clerical character, yet not wholly without importance. I notice that the words 'District Magistrate' are used in the Bill as amended by the Select Committee, and in the Bill as it went before the Committee. No doubt the words 'District Magistrate' are defined in Act X of 1882; but inasmuch as this Bill is one to amend Act VI of 1870 which was passed before that Act, and is when passed to be read with Act VI, it appears to me desirable that the nomenclature of the Act we are amending, should be preserved. In that Act, the words 'Magistrate of the district' are used, and in that Act they are defined; and those who are cognisant with the difficulties which sometimes arise in the construction of Acts of the Legislature are fully alive to the great importance of retaining the same nomenclature in the amending Act. I therefore move that, for the words 'District Magistrate,' wheresoever they occur in the Bill, the words 'Magistrate of the district' be substituted."

The HON'BLE MR. COTTON said:—"I need hardly, as representing the Select Committee, observe that we shall be most glad to be advised by the learned Advocate-General in a question of this nature, but I think it right to explain, for the information of the Council, that the expression 'District Magistrate' was designedly used in the draft Bill with reference to the provisions of the Criminal Procedure Code. Section 3 of Act X of 1882 lays down that, in all Acts passed previous to that Act, the words 'Magistrate of the district' shall be understood to mean the District Magistrate; and the term 'District Magistrate' is used throughout the Code of Criminal Procedure. Bengal Act VI of 1870 was one of the earlier Acts referred to in the Code of Criminal Procedure, and accordingly it has been the practice of this Council, and I apprehend also of the Council of the Government of India, when they refer to the Magistrate of the district to describe him as District Magistrate. But if the Advocate-General is of opinion that it is advisable, in order to avoid inconvenience, to use the words 'Magistrate of the district,' I do not think the Council will offer any objection to the proposal. But I should like to have his opinion on the point I have brought to the notice of the Council."

[*Mr. Woodroffe; Mr. Cotton.*]

The HON'BLE MR. WOODROFFE in reply said:—"There is no doubt, as pointed out by the HON'BLE MR. COTTON, that by the Criminal Procedure Code it is enacted that, the expression 'Magistrate of the district' shall, in all Acts previous thereto, be taken to mean 'District Magistrate.' But, for that very reason, I think that though no real difficulty need be apprehended that, it would be advisable to make the amendment I have proposed to prevent even the arising of a factitious difficulty."

The HON'BLE MR. COTTON said:—"There is no real objection, but I thought it right to explain why the words 'District Magistrate' were used."

The Motion was put and agreed to.

The HON'BLE MR. WOODROFFE also moved that, sub-section (1) of section 2 be amended, and when amended stand as follows:—

'by an order in writing appoint not less than three, nor more than five, residents in any village or group of villages within the district of which he has charge to be the panchayat thereof.'

He said:—"The question involved in this question is this, whether there exists any good ground for reducing the possible number of the panchayat to one? In the Act which this Bill is to amend, the numbers are 'not less than three nor more than five.' I have looked through the report of the Police Committee on the conclusions of which in the main this Bill has been drafted, and have also endeavoured to make myself acquainted, as far as I could, with the opinions expressed upon the Bill since it has been circulated, to search for any reason or suggestion that the number should be so reduced as it is in the Bill as it stands at present, but I have been able to find none. Neither in that report, nor in those subsequently expressed opinions, are there any. I understand it is suggested that, there may be backward districts in which it might be difficult to obtain more than one person fitted to be a member of a panchayat. That is a position which does not appear to have been taken throughout the report, or in any subsequently expressed opinion. No doubt there may be such: but in looking at the Resolution of this Government, I find that among the recommendations requiring legislation are, special provisions for carrying on the duties of assessment and supervision in tea-gardens in Julpaiguri and elsewhere, where the ordinary panchayats are not to be appointed.

If there be necessity for legislation in such districts, it should be on the lines set out in this Resolution, that is, by way of special provisions to meet special wants in specially defined districts, and not by subjecting the general run of villages throughout Bengal to a state of things which is properly applicable only to certain specified districts in which there are certain very special circumstances distinguishing them, as the Resolution says, from places where the ordinary panchayats can be appointed. But there appears to me no reason given why, save in such special districts, there should not be at least three members of a panchayat, the lowest number that is prescribed by the present law. As far as the maximum limit is concerned, I am at one with the conclusion arrived at by the Select Committee.

"The position of affairs then is this that, if in any case only one person is appointed to exercise the duties of the panchayat, firstly provision will have to be made for cases of sickness or unavoidable absence from the village or the like; and, secondly, as there are, I believe, in almost every village in Bengal rival parties amongst the villagers, it appears to me that if the Council were to adopt the possible limit of one, in many villages there might come to pass that there will be but one so selected, who would probably represent simply one faction in the village, would undoubtedly proceed to deal favourably with those who are on his own side, and with as much harshness as he can with those on the other side. Further, by having more than one person to decide on any particular matter of assessment or other duty within the province of the panchayat, some sort of controlling influence will be exercised. If there be at least three members appointed, such evils would, it seems to me, be minimised to a great extent, if not entirely removed.

"But there is another circumstance, which I think may induce hon'ble members to dismiss from their minds the suggested difficulty of being able to get three fit men to serve on the panchayat. In this Bill, as now drafted, power is given to the Magistrate to include more than one village for the purposes of the Act, and to form a group of villages, and to have a panchayat, either for a single village or a group of villages. If that be so, the difficulty which, as I understand, has suggested itself to the minds of some hon'ble members falls to the ground. It can hardly be supposed that in any group of villages, such as the Magistrate in the exercise of his discretion and the power conferred upon him by law may see fit to group together, there cannot be found three proper persons."

[*Mr. Cotton.*]

The Hon'ble Mr. Cotton said:—"The provision in the Bill to which the learned Advocate-General takes exception was, as he surmises, deliberately introduced with primary reference to the districts of Jalpaiguri, Darjeeling, and, I may say, Chittagong, where there are tea-gardens and coolies in considerable numbers clustered together around the factory, constituting, in reality, villages, but yet not such villages as fall within the definition of that term under the existing law. And the question having been raised more than once whether the existing law applies to such places, the Advocate-General (Sir Charles Paul) expressed his opinion that it did not; and in consequence, the Chaukidari Act has not been extended to such places. It was thought advisable in any new legislation to provide for this difficulty, and in the first draft of the Bill special sections were inserted which would meet the case of such tea-gardens. But afterwards, on further consideration, it was thought that the difficulty might be obviated without resorting to special provisions for the purpose, but by a change of the present law to the form it has assumed in the Bill now before the Council, namely, that the District Magistrate may appoint one or more, but not more than five persons to be the panchayat.

"It is contemplated that in such cases as those to which I have referred, the District Magistrate will be in a position to appoint the resident planter it may be, or if there is objection to such a course, the head Babu of his establishment, or, at all events, appoint a single officer who should discharge the duties of the panchayat under the Act. This is the primary explanation of the modification of the law now before you. When the Bill was circulated to local officers, it was brought to notice by more than one Magistrate, and especially by the late Mr. Ashutosh Gupta, a very able and promising young Civilian, whose loss the Government has much reason to deplore, that a reduction in the number of the panchayat rendering it possible to appoint one person would prove very useful in the case of collieries where the circumstances are similar to those of tea-gardens; and I may add that it would also, in my judgment, prove convenient in the case of indigo factories occasionally. In Lower Bengal, particularly, it is often the case that around factories or the head-quarters of collieries a very large number of coolies, *boonahs*, or of whatever caste they may be, congregate and form large villages, from amongst whom there is no one who can properly be appointed a panchayat—no one who could be selected but the employer of the labourer or some one on his establishment; and it is just as necessary to appoint the manager of the colliery or factory, or

his head assistant, as to appoint the manager in a tea-garden or his head assistant in the tea districts of Jalpaiguri, Darjeeling and Chittagong. There are, therefore, a very considerable number of cases in which it would be extremely inconvenient if this provision of the Bill is exercised and the minimum number of the panchayat is fixed at three. The object of the change is primarily to meet these cases.

"But I must add that quite independently of these special cases, there are tracts to be found in Bengal where it will be found to be very difficult to appoint a panchayat of even so many as three persons. I am quite sure that in every district where it can be done, full panchayats will be appointed. It is a great advantage for purposes of administration to appoint at least three men to perform the duties of panchayat. The burden imposed upon the panchayat of assessing and collecting the tax is considerable, and a single villager, as villages are now constituted in Bengal, will no doubt often find it an excessive burden. The Magistrates would, of their own accord, often appoint as a rule three men, or it may be five, to be members of a panchayat. But there are places where this cannot be done, backward tracts, very special areas, isolated villages, which it is impossible to amalgamate with other villages without great administrative inconvenience—very small hamlets it may be, two or three miles apart, as is the case in some parts of Eastern Bengal. In such places, it will be convenient to appoint a single man as the village panchayat. Therefore, I think, it is desirable that this provision should be maintained in the Bill; not only to meet the special cases with reference to which the alteration in the Act has been specially proposed, but also to meet the ordinary case of a Bengal village where it has been found impossible or inconvenient to appoint more than a single member a panchayat. I hope, therefore, the Council will allow this provision to remain as it is in the Bill which has been presented by the Select Committee."

The HON'BLE BABU GONESH CHUNDER CHUNDER said:—"As the next amendment on the agenda of which I have given notice is precisely the same as the present one of my hon'ble friend, the Advocate-General, I wish to say a few words in support of his motion. It seems to me that the word 'panchayat' in itself conveys an idea of plurality. It will therefore be a contradiction in terms to use the word to designate a panchayat consisting of one member. If the number is sought to be reduced to one, I think the word had better be taken out of the Act altogether, and the word 'assessor' or 'tax-collector' substituted; just

as may be agreed upon. It is said that, in some villages there is a paucity of fit men, and on that ground it is expedient to reduce the number of the panchayat to one; but in reply to that I say, as has been pointed out by the Advocate-General, that the remedy will be in the hands of the District Magistrate. Under section 3 he will have the right, where he finds a paucity of men fit to act on the panchayat, to group together as many villages as will supply the required number of men. The Act has to be worked in rural tracts of the country, where one would expect to find only men of the ordinary calibre; in that case a collective body of such men would always discharge their duties more efficiently and satisfactorily than if such duties had to be performed by one single individual. They would have the advantage of consulting together, and, what is more, a body of men would be less likely to abuse their power than a single individual. Then, it is said that in villages where there are tea-gardens, indigo plantations, or collieries, it will be more convenient to have the manager or his assistant appointed the sole member of the panchayat. That may be so; but considering the small number of villages in this country in which there are such tea-gardens, &c., compared with the very large number of villages in which this Act will have to be worked, it will not be worth while to legalise what would be an absurdity in language on the face of it, and inconsistent with the very idea of the thing itself. I therefore support the motion of the Advocate-General."

The Hon'ble Mr. Allen said;—"When Act VI of 1870 was passed, it fell to my lot to be one of the first Magistrates called upon to introduce the Act. I was at the time District Magistrate of Birbhum. I have, therefore, what probably no other member of this Council has, actual experience of the difficulty of procuring even three men to act on the panchayat. I suppose no person will, for a moment, deny that the arguments used both by the Advocate-General and by the last speaker are perfectly sound, and they must commend themselves to every one, namely, that, if possible, a panchayat of three persons is to be preferred to a single man; but unfortunately villages there are, besides the special tea districts, where that is not possible, and therefore of necessity the application of the Act would be impossible everywhere. The result will be simply that the Act will not be operative in a vast number of villages even in some of the regular districts of Bengal, such as Birbhum. In Birbhum, there is a large village less than five miles from the sadar station, containing more

than 100 houses, and being most anxious to introduce the Act there, I could not find three men who could be trusted or who had sufficient education to be appointed panchayat. The inhabitants are all peasants, palki bearers and weavers. In this one district of Birbhum, there were at the time something like 3,000 villages, and I am confident that if a panchayat of three members is essential to the introduction of the Act, more than 2,000 of those villages will never come under it at all. Respectable men do not live in rural villages; in many districts the only occupiers are the peasantry and low-class men who would not undertake the duties, and could not be trusted to do so. It would therefore be best to provide that, wherever three fit persons can be found that should be the minimum number, but by insisting on a minimum of three in all cases, the Act will be inoperative in fully half the villages in a number of ordinary regulation districts in Bengal. If the Council is prepared to say that it shall be so, well and good, but they should know that this will be the result. The HON'BLE BABU GONESH CHUNDER CHUNDER thinks it a grammatical absurdity to call a single man a panchayat, but I have a precedent, the authority of which he must recognize. In yesterday's *Englishman*, there is a report of a case decided in the High Court on appeal from the district of Backergunge, and the Judges, in their decision, speaking of a witness said:—'We are not inclined to put much faith on any of the witnesses. The first is a *panchayat*, and was formerly a servant in the family.' I think that is a precedent for using the word panchayat to describe a single person, and it also throws light upon the status which a panchayat occupies—'a servant of the family'—not a servant for collecting rent or connected with the land—a domestic servant."

The HON'BLE MR. WOODROFFE said:—"I do not myself place very much stress on the argument that, a single person cannot properly be said to come within the meaning of 'panchayat', though I must say the HON'BLE BABU GONESH CHUNDER CHUNDER has pointed out some difficulty arising in that matter. But apart from that, and dealing with the objections placed before the Council by the HON'BLE MR. COTTON, I think they may be easily disposed of. There are no cumbrous provisions necessary to be added to this Bill. All that is required to meet those objections may be done by the introduction of a short clause of the simple nature I had the honour to indicate, I thought with sufficient clearness, to the hon'ble member of the Council before I sat down.

And, if I have the President's permission to introduce it at this stage without notice, I am prepared to indicate to the Council how, as it seems to me, that which is regarded as an insuperable difficulty, can be got over in the most simple manner. With this object, I ask the President's consent to move that, at the end of sub-section (*1*) of section 2, the following proviso be added:—

'Provided also that the Local Government shall be entitled to prescribe that in certain specified local areas to be notified in the official gazette, the number of persons to be appointed to discharge the duties of a panchayat may be reduced to one.'

The HON'BLE THE PRESIDENT said:—"As no Member is likely to object to the introduction of the proposed clause even at this late stage, I shall thank the hon'ble member for introducing it."

The HON'BLE MR. WOODROFFE continued:—"Having obtained Your Honour's permission to propose that clause, I have only to say that the clause speaks for itself and gets rid of the difficulty the HON'BLE MR. COTTON has felt. It will retain the existing number of the panchayat in ordinary districts; and in those areas which are special in their character, where it may be necessary to appoint a more limited number, it will enable the Local Government, in the exercise of its discretion, to reduce the number to one. I therefore move this further amendment."

The HON'BLE MR. COTTON said:—"I must say I think this amendment will cause some little embarrassment in its practical operation. It comes to me unexpectedly, and it is difficult to express an opinion on the spur of the moment as to how it will actually work. But I shall not be surprised if a considerable number of applications are made to the Government to exercise its powers under this provision. And unquestionably it will be embarrassing to the Government to have its time taken up by matters of this sort, which would be well left to the district officers. Separate investigation will have to be made in every case, and it will give rise to trouble to the Local Government without, I think, much advantage. There is also some objection to notifying such extremely small local matters in the official gazette which is circulated to all parts of the province. It is only desirable to notify in the official gazette matters of general public importance, not matters of extremely local and special significance. I think the Council will be better

advised if it were to leave to the Local Government and to its district officers to appoint under this section, as undoubtedly would be done wherever it can be done, three or more members of the panchayat. There is not the smallest wish on the part of local officers to appoint a single man only if they can help it. I can say with confidence that, Magistrates would prefer a panchayat of three or five. The old Act provided for a panchayat of three or five, but how was the difficulty overcome? Simply by panchayats not being appointed, and thus, although the number is now three or five, the work is in the vast majority of cases done by a single man owing to the exigencies of the situation. The number of men available in villages in the mufassal is not sufficiently large. You are compelled to go either, as the HON'BLE MR. ALLEN has just pointed out, to the servants of private individuals to make up your panchayat, which is very objectionable, or to have no panchayat at all. The constitution of panchayats is extremely bad owing to the difficulty of obtaining fit men. I think the Council might leave it with the Local Government to arrange with the local officers what the number of the panchayat should be, and I hope, therefore, the proposed amendment will not be passed."

The HON'BLE MR. WOODROFFE said:—"The hon'ble member has misconstrued my amendment. It does not require a notification in each particular panchayat's case, but only in respect of each specified local area."

The HON'BLE MR. COTTON said:—"That may be the intention, but it seems to me that the terms of the amendment require a notification in each case."

The HON'BLE the PRESIDENT said:—"My own feeling on this question is that, on the whole, I prefer the section as it stands, on account of the difficulties which have been mentioned in the Police Committee's report as to the cases of tea-garden coolies and so forth, where it is practically impossible to appoint more than one person, and also on account of the difficulties which the HON'BLE MR. ALLEN has forcibly brought forward, although it must be admitted that those difficulties have not been represented in the correspondence or the evidence given before the Police Commission as involving any serious obstacle. At the same time, I believe that the amendment of the HON'BLE MR. WOODROFFE, governed by the subsequent amendment which he has also brought forward, will attain the same result. The only objection I see to it is, that it will give a certain amount of trouble to the Secretariat in issuing notifications. But I distinctly

[*The President; Mr. Woodroffe; Babu Gonesh Chunder Chunder; Mr. Risley.*]

understand that, the terms of the amendment necessitate simply a notification of this kind, that 'in thána so and so of such a district, or in the villages hereunder mentioned, the number of the panchayat shall only be one.' It is not necessary, as I take it, that there should be a notification as to a particular panchayat; but that a certain local area, or certain villages falling within the same category, may be placed in a schedule of villages where only one person can be found suitable to exercise the duties of a panchayat. The question is one which I can safely leave to the members of the Council to decide by their votes, without indicating any expression of the views of the Government, or any strong wish on my part that it should be decided in one way or the other."

The HON'BLE MR. WOODROFFE's motion that, sub-section (*1*) of section 2 be amended, was then put to the vote and carried.

The HON'BLE MR. WOODROFFE's motion that, a new proviso be added to the end of sub-section (*1*) of section 2, was also put to the vote and carried.

The HON'BLE BABU GONESH CHUNDER CHUNDER, by leave, withdrew the motion of which he had given notice that, in sub-section (*1*) of section 2, the words 'one or more residents, but not more than five,' after the word 'appoint' be struck out, and instead thereof, the words 'not less than three nor more than five residents' be substituted.

The HON'BLE BABU GONESH CHUNDER CHUNDER said:—"If the HON'BLE MR. RISLEY will alter the amendment of which he has given notice, to add a sub-section to section 2, by incorporating in it the amendment which has just been adopted on the motion of the HON'BLE MR. WOODROFFE, I will withdraw the amendment of which I have given notice."

The HON'BLE MR. RISLEY having signified his willingness to incorporate the amendment—

The HON'BLE BABU GONESH CHUNDER CHUNDER, by leave, withdrew the motion of which he had given notice that, the following sub-section be added before the proviso in section 2:—

'or (*2*) he may, with the previous sanction of the Local Government, direct that the adult male rate-paying residents of any village or group of villages shall elect, subject to any conditions and in any manner and according to any rules that the Local Government may, by notification published in the official Gazette, see fit to direct, not less than three nor more

than five residents to be the panchayat thereof subject to his approval; and the Magistrate shall, if he approves of the persons so elected, appoint such persons to be the panchayat of such village or group of villages, and shall if he disapprove of any person so elected for reasons to be recorded by him in writing, appoint a fit and proper resident to be a member of the panchayat of such village or group of villages, in the place of the person not approved of by him as aforesaid.'

[The HON'BLE DR. MAHENDRA LAL SIRCAR enquired if, in moving his amendment the HON'BLE MR. RISLEY would also agree to substitute the word 'elect' for 'select,' so as to make his amendment correspond in every respect with the amendment of which the HON'BLE BABU GONESH CHUNDER CHUNDER had given notice?]

The HON'BLE MR. RISLEY said:—"I have been asked whether, in moving the next amendment, I will not only adopt the amendment which has just been carried on the motion of the HON'BLE MR. WOODROFFE, namely, to substitute the words 'not less than three nor more than five residents to be the panchayat thereof' for the words 'a person or a specified number of persons not more than five to be the panchayat or members of the panchayat for such village' in the amendment of which I have given notice; but whether I will also agree to change the word 'select' in my amendment for the word 'elect' in the amendment of the HON'BLE BABU GONESH CHUNDER CHUNDER? In reply to the hon'ble member's question, I would say that, I prefer to retain the word 'select,' and I shall have the opportunity of explaining the reasons which induce me to do so. I will, in the first instance, ask the permission of Your Honour to introduce the words incorporated in the Bill on the motion which has just been passed."

The HON'BLE the PRESIDENT having signified his permission—

The HON'BLE MR. RISLEY moved that the following sub-section be added after the words 'may hereafter be extended' in section 2:—

'or (2) he may, with the previous sanction of the Local Government, direct that the adult male rate-paying residents of any village or group of villages shall select, according to any rules that may be prescribed by the Local Government and published in the official Gazette, not less than three nor more than five residents of the village or group of villages to be the panchayat thereof; and if he approves of the person or persons so selected, he

shall appoint such person or persons to be the panchayat or members of the panchayat in such village; but if the District Magistrate shall not approve of any person so selected, he shall, for reasons to be recorded by him in writing, appoint a fit and proper person to be the panchayat or a member of the panchayat in such village in the place of any person not approved of by him as aforesaid:

'Provided that no panchayat shall be appointed in any place to which the Bengal Municipal Act, 1884, has been, or may hereafter be, extended.'

He said:—"In moving this amendment I may refer briefly to the history of the proposal that the chaukidari panchayat should be selected by the villagers themselves. That history is comparatively a short and simple one. In the report of the Police Committee (paragraph 41) they refer to Act VI (B.C.) of 1870, and say:—

'It was apparently thought (when that Act was framed) that the Magistrate of the district would be able by his local knowledge to select fit and proper persons. It seems also to have been thought that any villager was fit to be a member of a panchayat, and might be trusted to assess his fellow-villagers justly, to collect the rate, to decide how many chaukidars were required, and to see that they did their duty. Both of these are assumptions which were not justified by subsequent events. Mr. Monro's Committee, it will be remembered, found that panchayats had not been judiciously selected, and attributed this in a great measure to the selection having been left to the police. By Act I of 1886, section 3 of Act VI was consequently amended in such a way as would, it was believed, lead to a more careful selection of panchayats. The Magistrate who visits the village is directed to inquire from the villagers who are in their opinion the fittest persons to be members of the panchayat.'

Consequently it will be seen that Act VI of 1870, as amended by Act I of 1886, contains within itself something closely approaching to the principle which the present amendment seeks to introduce. In commenting on sub-section (*2*) of section 2 of the draft Bill, the Commissioner of Rajshahi expresses himself in terms implying his belief that, the present law does in fact virtually provide for selection. To put the matter plainly, Mr. Nolan appears to be of opinion that, any Magistrate may go into a village and order the villagers to select their panchayat, and the conclusion he draws from that is adverse on the whole to the sub-section. He says that, sub-section (*2*) as it stood in the draft Bill has no force or validity one way or the other, and that it really leaves the matter where it was. I do not agree in this criticism. There seems to me to be all the difference in the world between a section which lays down a definite mode of procedure and provides for effect being given to it by a definite set of rules, and a section which leaves every

thing to discretion, and does not suggest the mode in which that discretion should be exercised. Sub-section (*2*), which reproduces in a slightly modified form the corresponding section of the original Bill, lays down that, selection should be made by the villagers subject to rules to be sanctioned by the Government and notified in the official gazette. It suggests a procedure and indicates a principle which, it is hoped, may turn out eventually to be self-working. It is interesting to note that, the views of the Police Committee on the subject of the panchayat underwent some modification during their deliberations. At the meeting held on the 7th January, 1891, I find the President moved that the following powers:—'the allotment of chaukidars, fixing the pay of chaukidars, appointment of chaukidars, dismissal of chaukidars—should be vested in the District Superintendent of Police, subject to the control of the Magistrate, and that the law be amended accordingly.' Obviously, the adoption of this proposal would have left the panchayat very little to do, and would, in fact, have been hardly compatible with the maintenance of the panchayat at all. But the Committee saw reason to change their minds on this point, and on the 12th of January, they considered a note by myself on the selection of the panchayat, and adopted it as the basis of their recommendations. Their recommendations will be found in paragraph 43 of the report. It is there stated briefly and plainly:—

'We would allow all adult male owners or occupiers of houses in a village to vote for members of the panchayat, and the names of those thus elected should be submitted to the Magistrate for confirmation. Before issuing orders, the Magistrate would make such enquiries as he might think necessary, and the insertion of the condition of respectability in the law would enable him to reject any disreputable or low caste person who was not fit in his opinion to hold the post. We are unable to recommend that ability to read and write should be indispensable qualifications, both because, as mentioned above, in many parts of the country villagers so qualified are not procurable, and because in many cases illiterate men are not only influential, but sensible and practical men of business. At the same time, where possible, men who can read and write should, we think, be appointed.'

"The section which was struck out from the Bill by the Select Committee, and which is now under consideration, substantially gives effect to the proposals of the Police Committee. It gives effect to them subject to certain precautionary limitations, the necessity of which is obvious enough. What the Committee say about respectability, about empowering the Magistrate to reject low caste men, about the ability to read and write not being an indispensable qualification, and

so forth, will obviously be included either in the rules which it is proposed the Government shall frame to regulate the working of the system, or in executive orders issued for the guidance of Magistrates.

"Let us now consider how these proposals have been received. We have, among the papers before the Council, opinions from officials and from representative bodies and associations. I find that as many as ten Associations have submitted opinions on the Bill and have referred to this clause. All of these, with the single exception of the Central National Muhammadan Association, are in favour of the elective clause. Some of them suggest that, its terms should be altered in some, not very material, particulars. Thus the Noakhali Association would require the Magistrate's proceedings, when he disapproves of an election, to be submitted for the confirmation of the Commissioner. The Barisál People's Association suggest that, villages which elect Local Boards should be declared competent to elect panchayats. The Murshidabad and Rajshahi Associations would make election universal, and eliminate the Magistrate altogether. The other Associations approve generally. The Central Muhammadan Association disapprove of this principle of election, but it is apparent from their reference to the working of the elective principle, that they have in their mind some mode of election differing materially from that which in actual practice the sub-section would introduce. They speak of election as it prevails in municipal towns, and it would seem from the tone of their remarks that they are not altogether free from misgivings as to the success of the elective system in municipalities. But whatever may be the actual working details of the method of election or selection, which will be adopted for the panchayat, it is certain that it will differ in many important particulars from the system of election obtaining in municipalities.

"Turning to the opinions of the Commissioners of Divisions, five of them appear to be on the whole in favor of the section. Mr. Toynbee, Commissioner of Orissa, passes it over in silence, and it may be assumed that he and his district officers accept it. It is not the manner of district officers to let opportunities slip in that fashion. Mr. Lyall, Commissioner of Patna, apparently approves of the provision, but presumes that it is not intended that the sanction of the Local Government shall be necessary for each village. Of course, it is obvious that it would not be required for such minute areas. Mr. Lyall also remarks that, it is a question whether the sanction of the Commissioner should not be sufficient. Mr. Grimley, Commissioner of Chota Nagpur, makes no mention of

the section, and therefore presumably approves of it. Mr. Beames, who was President of the Police Committee, approves of the section. [MR. COTTON:—'I am not aware that Mr. Beames approves: will you read his remarks?'] Mr. Beames says:—'I have the honour to state that as the Bill now circulated embodies the proposals of the Police Committee, of which I had the honour to be President, I naturally agree to it, and have no objection to raise.' Those words seem to me to leave little doubt as to Mr. Beames's opinion on this subject.

"Mr. Power, Commissioner of Burdwan, gives what may be called a qualified assent to the provision. He says:—'I see no objection to the principle of election, safeguarded by the restrictions proposed; these, however, are absolutely essential, for it would, in my opinion, be a fatal mistake to deliver over rural Bengal to the tyranny of majorities.'

"Mr. Quinn, Commissioner of Bhágalpur, would strike out this clause, as elections are, in his opinion, entirely out of place in villages. He says:—'The Magistrate should, as far as possible, ascertain and consider the wishes and sentiments of the residents in selecting the panchayat, and executive rules may be laid down with a view to secure this object, but this is quite a different matter from directing the holding of an election, a function for which the rural population are quite unfitted.'

"Mr. Oldham, Commissioner of Chittagong, is on the whole opposed to the section, but seems to have no *a priori* objection to its principle. He says:—

'I hope that the Hon'ble Mr. Cotton's speech in Council will have disposed of the subject proposed to be provided for by clause (2) of draft section 2. The proposal conflicts with the proposed beginning to change the character of the village police made by the constitution of a district fund, even though it is only to be a reward fund at first, and even though, as long as each chaukidar is subscribed for by the village, and in the village, he must continue to be more or less a village servant. But the provision in the first part of draft clause (2) to section 2 is so contingent, and so restricted, and can be so neutralized, that I think it would be better in a measure like the draft, which cannot by its nature enact very exact details, to omit this part of the clause, and to add in its place to clause (1) the words 'and in so doing may consult the rate-paying inhabitants of the village.'

"That, no doubt, can hardly be described as a definite and clean cut opinion, but I submit that it is not positively adverse to selection by the villagers as a mode of appointing the panchayat.

"Lastly, Mr. Jenkins, Officiating Commissioner of Dacca, gives his own opinion and the opinions of the district officers. He writes:—

'The Magistrate of Mymensingh thinks that the provision regarding election is comparatively harmless. The Magistrate of Faridpur, however, is opposed to it. He apprehends that this would only lead to party faction and disputes in villages. It would be easy, he reports, for interested persons to get up a large number of applications for election, and the Magistrate, in refusing them, would be made to pose in the eyes of a section of the public as a constant enemy to the cause of progress. This would not make administration more easy. The office of panchayat has never been popular. No respectable person has ever held it in high esteem, and it is unlikely that the importance of the appointment would be enhanced in the eyes of respectable persons by making it dependent on the suffrages of their raiyats. I agree with Mr. Growse in thinking that the election of panchayat is neither necessary nor desirable; on the contrary, it will lead to difficulties and complications, and give considerable trouble to the executive authorities, without securing any corresponding advantage.'

"The Magistrate of Mymensingh referred to in this extract, is, Mr. Phillips. I think no one will suspect Mr. Phillips of a tendency to neglect the interests of the executive. If he considers the clause harmless, it must be harmless indeed. I have already referred to the opinion of Mr. Nolan, Commissioner of Rajshahi, and I have passed in review the opinions of the several Associations, 9 out of 10 being in favour of the sub-section, and the Muhammadan Association opposing it under a misapprehension of the kind of election likely to take place, and looking upon it as an election of the sort with which we are familiar in municipalities. With reference to the opinions of Commissioners of Divisions, I submit, without straining any point at all, that it can be fairly claimed that five of them are out-and-out in favour of the section and four are opposed to it. At the same time, it is clear from the opinions that those who are against the proposal oppose it from a mistaken view of its true character. The kind of election they are thinking of, differs *toto cœlo* from the kind of election which the section contemplates, and I believe if these gentlemen could hear my explanation of its intention and probable working, I should have most of them on my side.

"Now, let us take the question on its merits. People say that villagers in this country are very ignorant and stupid people; that they are so foolish that they cannot be trusted to do anything for themselves; that everything must be done for them; that there must be continual special intervention in order that their affairs may be properly regulated. I must say that that is by no means my experience. For a good many years I have been endeavouring to find out something about the customs and religions and usages of the inhabitants in rural villages in Bengal, and in order to get at the views of the people I found it

necessary to go into villages myself, to see a great deal of village life, and further I found it necessary in these visits to dissociate myself from the regular police, to take with me no *chaprási* or policeman or any subordinate official. I found in practice that the villagers are not apt to be communicative when you have a police officer with you. And I must say that within the range of their knowledge—they have their limitations, like all of us—the villagers in this part of the country are an extremely shrewd and intelligent set of people. If there is any matter of village business you want to know about, you will find as a rule that the matter will be very clearly explained, and that every one understands all about it. The explanation will not necessarily be absolutely true, but that is not relevant to the present question. The question is, whether the people are intelligent enough to be able to exercise properly the power proposed to be given to them. Speaking for myself, I think they are certainly as intelligent as the average English peasant, and there is nothing they are more conversant with than the very matters with which this Bill is concerned. These matters are very simple and come within the range of the average villager's every-day experience. The election of panchayats for the purpose of disposing of what may be called communal business is going on every day all over the country at the present moment among castes of all sorts, and the various social groups into which they are divided. Every one of these groups has a governing body known as a panchayat or by some similar name, and to these bodies are entrusted not only such social functions as interdicting a man from the right of smoking or drinking water with his fellow-castemen, cutting off his *hooka* and his *pani*, but the administration of a large body of customary law. Among the large section of the population which is as yet untouched by the great codes of Hindu law, all social, domestic and civil relations are regulated by unwritten customary law, administered by panchayats. Besides questions of property, this law deals with matters connected with marriage, the re-marriage of widows and the practice of divorce, which is extensively practised in certain social strata. There is no difficulty in finding out what the body is that does this work, and I have no hesitation in saying that it is very effectively done. If, then, these comparatively complicated matters can be dealt with as they are by elective panchayats, and if the people are so familiar with the idea of an elective panchayat, I cannot see what difficulty there can be in introducing into villages, as proposed in this section, the system of panchayats appointed by selection.

"In a matter of such importance, I do not wish to rely solely on the somewhat special experience which I have acquired in special researches, but I will put the case merely from the point of view of a district officer who has gone into a village to settle a dispute. The experience is a familiar one. On arriving at the spot you find a mob of people all talking at the same time; you tell them they must nominate somebody to represent the different parties to the dispute, and that you will discuss the matter with them. It has happened to me repeatedly to go into villages under these circumstances, and I have even gone so far as to ask the villagers to appoint a panchayat or arbitrators, and after consideration and discussion they have done so, and the matter has been settled. I have seen questions of a much more difficult and complicated character than the comparatively simple one of appointing a panchayat settled in this way—questions of rates of rent affecting whole estates; the villagers have nominated their representatives, have discussed the matter with myself, and the matter has been settled. In one of these cases a large European firm of zamindars was interested. In all of them I found virtually no difficulty in getting a thoroughly intelligent and reasonable opinion out of the representatives selected by the villagers themselves. I may add, that they did not accept without question either my proposals or those of the zamindar, but they put forward well-considered counter-proposals of their own. I do not now mention these proceedings for the first time. They are already on record, and are referred to with approval in a report by the Government of Bengal on one of the later forms of the Bengal Tenancy Bill submitted to the Government of India towards the end of 1884. This report contains a description of the procedure adopted by me of holding what may be described as village conferences, and mentions it as a procedure which may be properly resorted to where serious rent disputes prevail.

"Now if you can get the people to discuss burning, difficult, complicated questions like that, there can be no difficulty in getting them to settle who are the most fit persons to do certain very simple acts, and look after certain very simple business. But it is said—suppose it is conceded that villagers *can* do this, then the question arises *will* they do it? Doubtless this change like many other changes will not be introduced with a rush; the elective system will not extend like flame all over the country. It will come in gradually, and I think it desirable that it should not be hurried. But when the system is once started it will tend to spread. My reason for thinking so is,

that the people are interested in the principle of election; they will see which way their interest lies; that if they select a suitable panchayat it will save them a great deal of trouble; but if they select an unsuitable panchayat, the police will interfere; the sub-inspector, the head-constable and the constables will come into the village; there will be inquiry and explanation, and the result will be that every one will be put to a great deal of trouble and annoyance. I imagine that this will be a sufficient inducement for them to nominate a reasonable panchayat.

"I have thought over this carefully, and have considered what are the sort of things likely to happen in a village, and what modes of miscarriage are possible. It is no doubt conceivable that, in isolated cases the people may act maliciously and may seek to nullify the whole thing. To take an extreme case: they might appoint the village idiot, the village leper, and the village cripple to form the panchayat. It is not at all likely that they would do so, but if they did, no harm would be done. As soon as the Magistrate heard of their folly he would intervene and put things straight. He would say 'this panchayat is not a workable body', and thereupon he would proceed to nominate a reasonable body of men. Then there is the case referred to by the HON'BLE BABU GONESH CHUNDER CHUNDER that, in many villages there is a good deal of party spirit, and a good deal of *dala-dali* going on. Here, again, if a panchayat can be got to represent the various parties, there will be no reason to interfere; but if a workable panchayat cannot be got, things will come to a dead-lock, and the Magistrate will interfere, and will either appoint a panchayat from among the strongest party, or do what he thinks best. Then, there is a third case, where a *bonâ fide* mistake is made owing to the people failing to elect in time, or not electing the proper number; and in this case also, the Magistrate has nothing whatever to do but to intervene and appoint a panchayat.

"Lastly, I wish to explain one point in regard to which both in the official and non-official opinions there is very considerable misapprehension, namely, that the kind of election which the section contemplates is not the kind of election which many who have given their opinions have had in their minds. They have conjured up an entirely imaginary picture of a Bengal rustic village in the throes of a contested election, and have pictured to themselves canvassers and polling booths, elaborate provisions for recording the numbers of votes, declaring the majority and the minority, and all the paraphernalia of municipal

elections. That, I need hardly say, is a complete mistake; and in order to guard against such mistakes in drafting the sub-section I now move, I use the word 'select' instead of 'elect.'

"In giving legislative sanction to an indigenous oriental institution like the panchayat, it seems above all things desirable to avoid words which connote European ideas and practice. If you use the word 'elect' you will import into the section a number of conceptions which will answer very well in modern Europe, but certainly will not work in villages here. The fact is, there are two modes of election known to history. One is the primitive ancient mode which we read of in Greek literature, and I believe also in early Sanscrit literature—the mode by which primitive tribes and races all the world over have elected their popular assemblies. It is the mode by which the panchayat is elected in castes in the present day. I have made very careful enquiries on this point, and I am convinced that, the method in which the panchayat is elected cannot be expressed in terms of European political phraseology. The people get together and they talk, and eventually an opinion emerges from their talk which is the opinion of all of them. There is no majority, for they are unanimous; there is no minority, for the minority has been talked over and casts in its lot with the majority. The process can only be described as selection by acclamation, in the way, the earliest Greek and German popular bodies were selected, the oldest mode of election in the world, which still survives in rural villages in this country where we have so many survivals. That being so, it is an entire misapprehension of the purpose of this section to say that, its provisions will be too elaborate. The people use this kind of election every day, and there is no reason why a village panchayat should not be selected in the same way as a caste panchayat.

"I submit, then, that the introduction of this section will save a great deal of trouble all round. It will save the villagers from being harassed by the police. It will spare a great deal of work to district officers. It will give them a certain amount of work at first, but it will be easy and interesting work; and when the system is once understood in large areas, it will spread of itself from one village to another, and will afford a self-working system for the appointing of panchayats. That is what we want—a self-working system. It seems to me to be the highest art of legislation to devise automatic methods; not to arrange matters so as to require constant intervention and tinkering, but to make things make themselves. That, I believe, this provision will do."

[*Mr. Cotton.*]

The HON'BLE MR. COTTON said:—"As implied in the remarks I made when introducing this amending Act into Council, I am opposed to the principle of the election of the panchayat, and to the amendment now put forward by the HON'BLE MR. RISLEY, I must give my most uncompromising and unqualified opposition. I cannot imagine any principle more injurious to the successful working of the administration, if accepted, than the principle which the hon'ble member has been expounding to you. And I must say, I am surprised to see the use he has made in supporting his argument of the official opinions expressed on this proposal. As a rule, the local officers consulted have not referred to this provision of the Bill at all. No doubt they have observed the remarks I made in my speech when introducing this Bill, which implied distinctly that the Government were not in favour of the provision, and would be glad if it fell through. They have therefore been silent on the subject. My hon'ble friend thinks silence means approval, but in point of fact there is not a single Commissioner (except Mr. Power) who gives his approval to the measure now proposed; nor am I able to find that any District Magistrate gives it his approval. One or two do not strongly object to it, but I am bound to say that it is advocated by none. I do admit that the Associations consulted do generally support the attitude taken up by the HON'BLE MR. RISLEY, and I observe that it suits his convenience, for the purposes of his argument, to lay great stress on their opinions on this occasion. His attitude is very different when dealing with Associations of this kind when opposing opinions of his own. However, I do admit that the opinions of these Associations are entitled to certain weight, and I am also far from denying that considerable weight should freely be given to opinions expressed in the Press of Bengal on this subject. I have read a vast mass of literature on this subject in the Native Press during the last three months, and I am bound to say that the general opinion has been extremely adverse to myself individually, and is very strongly in favour of the proposal which the HON'BLE MR. RISLEY now advocates. Now I am the last man to deny the importance of this criticism, and I think there is hardly an article on the subject which I have not read and considered. Although I do not agree with, and have not been convinced by what I have read, yet I do not in the smallest degree resent the attacks on me. I think, however, I may take some exception to the opinion given by the British Indian Association, which refers particularly to my want of sympathy with the system of election, and then because I object to democratising Bengal villages, proceeds to charge me with antagonism to liberal institutions generally. Criticism of this kind goes rather farther than I am willing to accept without protest.

"What I wish to persuade the Council is, that the extension of democratic institutions to Bengal villages is thoroughly unsound and opposed to the traditions and the best interests of the country. And first I will treat the matter from the most general point of view possible. The election of executive authorities at all in any capacity is open to objection. Your executive authorities ought not to be elected. When I was a young man, the name of John Stuart Mill was held in high reverence, and he was acknowledged as an undisputed authority in all matters relating to representative government. I do not know whether other thinkers have arisen of recent years whose views have put those of John Stuart Mill in the shade. But assuming, as I am perhaps justified in doing, that the authority of Mill is as great now as it was 25 or 30 years ago, I will read a very brief extract from his valuable work on representative government bearing on this question of election. He said:—

'A most important principle of good government in a popular constitution is that no executive functionaries should be appointed by popular election: neither by the votes of the people themselves nor by those of their representatives.'

And again:—

'Every executive officer should be nominated, not elected. It is ridiculous that a surveyor or a health officer or even a collector of rates should be appointed by popular suffrage * * * If in cases of this description election by the population is a farce, appointment by the local representative body is little less objectionable.'

These are the remarks of a man who, besides being one of the greatest thinkers of his time, was unquestionably one of the soundest of Radicals, and if I am opposed to liberal institutions generally, I am at all events in good company in this particular. But even if the authority of John Stuart Mill or any other authority you can quote should have been in favour of election of such an executive authority as the village police panchayats are from the nature of their constitution, I would still be strongly opposed to extending that principle into Bengal villages. There is no country in the world where the aristocratic and conservative instincts are stronger than they are in India, and I think I may say in no part of India are they stronger than in Bengal. In my twenty-five years' experience of this country, I have had the pleasure of making the acquaintance of a very large number of gentlemen of the country. And I do declare to you that I have never met any educated native who has not been in his heart of hearts a thorough conservative of conservatives. Every Indian gentleman, I have ever met, has been aristocratic to the core. All the democratic institutions we have,

shall I say thrust upon them, have been opposed to their real sentiments. They have not liked to oppose them, but in their hearts they have been in opposition to them. The elective system is not inherent in representation, although with our democratic associations we have come to think it so. In all municipalities, the elective system is the weak point. In Calcutta, it is eminently so; in mufassal districts, more so probably than in Calcutta. That is a serious difficulty underlying the elective system, and the important problem before the Government is to procure real representation without election. We are accustomed enough in England to the difficulties resulting from election, although the system there has grown up with the growth of the constitution. Every conceivable effort has been made to overcome these difficulties by resorting to the ballot and other devices. But in India election is an exotic, and I do not know any member of a representative municipality who has approved of the system, or who would not prefer another system if it could be devised. And here, we are actually contemplating the extension of this vicious system in those rural tracts where, I am thankful to say, it has hitherto had no existence whatever.

"The HON'BLE MR. RISLEY observed very truly, but I think he was unconscious how strongly the remark made against his own argument, that members of panchayats emerge into existence. He could not say how they came into existence, but there they are. Well, that is perfectly true. There is no village in Bengal where you have not your recognised headman. In Bihár, you have your *jeth raiyats*. Are they elected? In the 24-Parganas, there is no village where there is not a *mondol*; in Midnapore, they exist under the name of *mukhya*; in Chittagong, they are called *máatibars*. Under whatever name they exist, they are the regular heads of villages. Will you anywhere find that these men have been elected? They are the headmen of the village recognised as such. As a rule they are the descendants of the headmen from time immemorial, but sometimes they have risen to be headmen by their own exertions. But nowhere are they elected. This idea of going into a village, calling in a crowd of villagers, and asking them whom they would elect, who will be their headman, what does it mean? If an answer is given to a question of that kind, they would say:—'Here is our *jeth raiyat*, here is our *mondol*.' Wherever a chaukidari panchayat is chosen it is now chosen by the agency of the police, and that is the way they are chosen. The police find out who is the *mondol* or *jeth raiyat*, and these are

the men who are ordinarily held to be qualified for the appointment. From the very essence of the case, that is the constitution of the panchayat. The Magistrate can appoint these men without difficulty by the executive agency at his disposal. He can do more difficult things than that. When the late census was taken, the District Magistrates appointed in this way enumerators in every village in Bengal, but they did not ask the villagers, as the HON'BLE MR. RISLEY would have done, to elect or select their enumerators.

"In point of fact, this principle of election or selection—it is a mere juggle of words—is not in accordance with the practice of the country, whether in Bengal or in any other Province. In regard to the choice of a panchayat for settlement of their social difficulties, panchayats in questions of marriage or caste, the people adopt a procedure of their own, but they do not elect. But that point is not before the Council. It is a point of which my hon'ble friend made a good deal of; but it is not before us. What we have before us is, the constitution of an executive body entrusted by law with executive functions. How are we to constitute such a body? I say by nomination; there is no other way (to quote Mill again) in which an executive authority can be properly appointed.

"I will assume for the moment that, the position of panchayat is a coveted one among the villagers. Any system you like of election is introduced; there are so many candidates: the panchayat or would be panchayat candidate goes about canvassing for votes; can any gentleman who has experience of Bengal villagers conceive of the head villager going about to the members of the village canvassing for their votes? Assuming him to do so, and assuming the village to be divided into sections and parties, assuming that there is the natural *dala-dali* which exists in almost every village, can any system be more calculated to create village disputes and dissensions than this? You would excite disputes and heart-burnings, and aggravate what is the curse of almost all villages in Bengal, this *dala-dali* system.

"This is on the assumption that, the post of panchayat is a coveted one. But in fact, is it so? I presume all the members of this Council know, as well as I do, that it is a post which every one seeks to avoid if he can. It is difficult, then, to conceive how rules for election are to be prepared by the Local Government. The resources of the Government will be considerably taxed in drafting these rules. It is difficult to understand how, when all the headmen wish to avoid the post, they are to be elected into it; their object

will be to be elected out of it. 'If the HON'BLE MR. RISLEY had had practical experience of the working of the Chaukidari Act in Bengal villages, he would have had more hesitation than he has actually shown before he would have brought forward such an impracticable and doctrinaire suggestion. The panchayat is an executive authority. As an authority for the assessment and collection of rates and for the control of the village watch, the position of the panchayat is unique. There is no other similar institution in any other province in India. In Bombay there is the headman, the village patel—a single man, not a panchayat. He is not elected. In Madras, there is the village headman, the patel or *kurnam ;* he also is not elected. In the North-Western Provinces and the Panjab, the idea is unknown ; a police panchayat has never been elected from among the people themselves. This particular idea exists in Bengal alone, and is our creation.

"I will not detain the Council longer regarding the constitution of the panchayat. The remarks I have to make on the attributions of the panchayat will come later on in the discussion, when amendments are brought forward on other sections of the Bill ; but I have said enough, I trust, to convince you that, if you accept the HON'BLE MR. RISLEY's amendment, you commit yourselves to a dangerous innovation, opposed to the traditions of the people and to the welfare of the villagers."

The HON'BLE DR. MAHENDRA LAL SIRCAR said :—"I rise just to say a word as dictated by common sense in support of the amendment which has been moved by the HON'BLE MR. RISLEY, though I wish the more specific word 'elect' had been preferred to the more comprehensive word 'select.' Selection by a number of people is election, and if a panchayat is to be selected by a number, it would be better if the word 'elect' were used. However, as there is not much difference between the two words, and as the principle is in essence the same, I do not take objection to the word 'select' in the amendment. The hon'ble member in charge of the Bill told us in his opening speech that, in England the control of the police has been withdrawn from villages ; but I do not think he has told us if the villagers are still made to pay for the police, and to assess themselves as is being done in this country. I am myself personally very strongly of opinion that the police, like the military, should be entirely under the control of the Central Government. But, then, no particular section of the community ought to be selected to pay for its police,

and if any section is so selected, it is but fair and proper that that section should be allowed some share in the control of its police, and that control can only be exercised by a body representing that section. Such representative bodies for Bengal villages have been existing from almost time immemorial, and notwithstanding what has fallen from the hon'ble member opposite, these panchayats have always been elected, though not elected after the modern fashion with all the paraphernalia of polling booths, and the like. But in point of fact, they have been elected. A panchayat means a representative body of five men, and I am glad that the amendment of the hon'ble learned Advocate-General has been carried, thus removing a grammatical absurdity from the Bill. Panchayats, as long as they have been treated with respect, as they ought to be, and not with insolence and all sorts of indignity as they generally now are, have worked admirably well. The elective system, therefore, is a thing not unknown in Bengal. Indeed, it is a very common thing in Bengal, and it is this elective system which the law has hitherto given to villagers in the matter of appointment of panchayats for the partial regulation of the village watch; it is this elective system which Your Honour's own Government in its Resolution on the Police Committee's report expressed its willingness to provide for wherever desirable and practicable: it is this elective system which the hon'ble member in charge of the Bill left intact in the Bill as introduced by him in this Council, but which somehow or other evaporated from the crucible of the Select Committee, partially evaporated, for I find it re-condensed in the shape of a dissent from two hon'ble members of the said Committee; it is this elective system which the amendment proposes to retain as in the original Act, and I have therefore great pleasure in supporting it.

"I must say, Sir, that I have been not a little surprised at the chorus of condemnation of, and opposition to, the elective principle, on the ground of its leading to party spirit by officials, that is, by gentlemen who hail from a country where party spirit constitutes the very life of the nation; where the party spirit, notwithstanding its drawbacks, has in no small degree contributed to the development of practical wisdom and the correction of abuses,—where, in fact, party spirit has been a most efficient and potent factor in advancing civilisation. And, Sir, it is but natural that this should be so, for it is but the counterpart of, and corresponds to, what obtains in the physical universe. I need hardly remind hon'ble and learned members of this Council that, it is the antagonism of opposite polarities, which under creative superintendence has produced and is

maintaining the marvellous cosmos of which we are part and parcel. I therefore, for my part, do not apprehend any evil consequences of a serious and permanent character resulting from the development of party spirit, by the carrying out of the elective system. On the contrary, I am confident that it will be attended by just the same blessings which have attended it in England and elsewhere, and I therefore accord my hearty support to the amendment."

The HON'BLE MR. WOODROFFE said :—"I rise to support the amendment which the HON'BLE MR. RISLEY has just moved. It is true I cannot claim for myself anything of the personal experience which is possessed by its mover and has been claimed by the HON'BLE MR. COTTON ; but when I came to look into the matter, and ascertained so far as I could, upon what principles this amendment rested and the grounds upon which it has been assailed, it seemed to me that I could not properly give a silent vote in support of the amendment. The propriety of this amendment has been challenged upon broader grounds than those affecting Bengal. It has been asserted that, it is the outcome of liberal principles to which the HON'BLE MR. COTTON has declared himself to be now, with almost the zeal of a recent convert, the most uncompromising opponent—principles vicious in the extreme and injurious to this country. What is the position of affairs? Is the elective principle as applied to panchayats a matter of recent history, or one of old date? It cannot be denied that the system of elected panchayats for the management of village affairs is indigenous to this country; it is, perhaps, one of the few remaining products of the earlier civilization which prevailed in this country, and it is not dead. It may have been misused ; it may have been prevented from attaining fair action, and the action it has taken may, in some instances, have, owing to its fetters, been such as to produce the very worst results. The HON'BLE MR. RISLEY has shown that, in matters of village life and customs of the people of this land, that system prevails. Why should it not prevail in the matter of the village chaukidar ? I am not impressed with the authority of the extract quoted from John Stuart Mill in the least, for that great thinker was not, in the passage which has been read to the Council, dealing with such an institution as the village watch, or of the best means of its selection in villages like those in Bengal. There, if I may be permitted to say, lies the fallacy of the HON'BLE MR. COTTON'S observations. It may be perfectly true that, the inhabitants of a village have no claim to control the police. I have not heard it asserted or suggested that they should

do so, but the question is—are the village chaukidars a police within the ordinary meaning of the word? It appears to me that they are not. They are a link between the people of the country and the police; they discharge most useful functions in keeping the police informed of the occurrences in the village; but they are not the police, and any step in the direction of turning the village chaukidar into becoming the real efficient police of this country, so as to leave, as the HON'BLE MR. COTTON has suggested in introducing the Bill, the existing constabulary no particular function to discharge other than those of escort and guard, and to some extent that of a police reserve, that I venture to think can never be brought about. If the village chaukidari system is dead and gone absolutely, in the name of all that is reasonable, let a Bill be introduced to substitute in its place a body of police distinguished from the ordinary police, in that they may be more localized in character, but to be paid for by the general body of ratepayers of the country. That system is, however, not dead. It still lives, maintained by what is practically a hearth-tax, and yet it is said that, as regards the present chaukidars, the people are not to have any voice in the matter. Let me point out to the Council that the principle of selection, or election, or choice, I care not what particular word is used, is most distinctly embodied in the existing law. That existing law requires the Magistrate to go round to each village to explain the elective principle, and to ascertain the wants and wishes of the people in the matter. We say that that is, in principle, the elective system. That, I think, must be conceded at once; and when the matter was before the Police Committee, they have, in section 43 of their report, distinctly stated:—'We would allow all adult male owners of houses in a village to vote for the members of the panchayat, and the names of those thus elected should be submitted to the Magistrate for confirmation.' When that report was submitted to Government, the Government was pleased to state in a Resolution, dated 28th November, 1891, that 'provision would be made for the election of the panchayat in such parts of the country as might be fitted for the exercise of this privilege, and where it is desirable.' Was the pledge which was given in this Resolution to be thrust aside and altogether broken? Most certainly, I think the Council will come to the conclusion that it ought not. Is this Bill, as its title runs, one to amend Act VI of 1870, or to repeal Act VI of 1870? Above all things let there be straightness in our words and in our actions. If this, which is the principle of Act VI of 1870, as amended by Act I of 1886, is not to be thrown to the winds, then the striking out of this clause by

the Select Committee is an act not of amendment, but of repeal. Further, in the Statement of Objects and Reasons put forward by the hon'ble member in charge of the Bill, I find it stated that, it is proposed that the Magistrate may, with the sanction of the Local Government, arrange for the election of the panchayat by the ratepayers in the manner most convenient. That represented, I doubt not, the views of this Government at that time and of the HON'BLE MR. COTTON, whose name was at the foot of it. But since then a change has apparently come over his view of this matter. The hon'ble member in charge of the Bill deals with the question that, the appointment of a member of the panchayat is not a coveted appointment. That may well be so. As far as my reading of this matter goes, it seems that it is so, and I see no reason in the world why, under the existing practice, it should not continue to be so. But we desire that that should be changed; we desire that what has made in a large measure the office of a member of a panchayat undesirable, should be removed. It is impossible to get good work out of an unwilling servant. In 1866, Mr. McNeill made a report on the matter in which he pointed out that, the real difficulty lay in the inability to secure the co-operation of the people in the administration of the law, and he attributed it in great measure to the illegal interference and the exactions of the regular police. How are you to get the co-operation of the people? You cannot get it by thrusting them into an office which they do not desire. The system which is proposed by this amendment will be introduced in places where the people are found fitted for it, and as they become fitted for it. It is said in this report that, the amendment introduced by the law of 1886 was a dead letter? Why so? Because those who were charged with the duty of explaining the principle of the elective system and endeavouring to find out who are fitting persons to be appointed in the panchayat have been unable to discharge that duty. The plea put forward is the want of time. I am well aware that magisterial authorities in Bengal have large calls upon their time, but as a tolerably busy man myself, I am inclined to view the excuse of want of time to mean, in ninety-nine cases out of a hundred, that the person has not chosen to make time.

"No doubt this measure will operate in what has been described as a piebald fashion; in some districts, the Magistrate will appoint a panchayat; and in others, it will be self-elected. But if local selection of panchayats be introduced in an orderly manner into suitable localities, and then worked according to

some definite rule, then a great part of the difficulty will immediately vanish. Finding then an existing institution which may be made use of for the useful purpose, we desire, if possible, by this amendment to bring the people of this country to willingly co-operate, so far as their power enables them to do, in the administration of justice in the country. This amendment will accord, moreover, with those measures of Self-Government that have been previously introduced into this country, and with the provisions which I find in the Chota Nagpur Police Act; providing that if two-thirds of the adult male inhabitants are agreed upon deputing men to serve in the panchayat, they should be so elected.

"I confess, to use the expression of the HON'BLE MR. COTTON, that I am surprised at his stating that, in the comments which have been made and in the opinions which have been given by the various officers consulted in this matter, not a single Commissioner, with the exception of Mr. Power, or a single Magistrate, had written or spoken in favour of it. That I venture to think, and shall show, is an entire mistake. The Commissioner of the Presidency Division, Mr. Westmacott, who was a member of the Police Commission, says:—'On this subject I may claim to speak with some authority, having tried the experiment as reported at length on the 31st March, 1884, to the Government of Sir Rivers Thompson after enquiring into the possibility of forming Union Committees. I believe the rough system of election which I therein indicated to be perfectly practicable in any part of the province if supervised by an intelligent Magistrate. I would call on the villages of a union as I did in 1883-84 to elect a Union Committee, and the representative elected by each village should be the panchayat of that village for chaukidari purposes.' Then Mr. Lowis, Commissioner of Rajshahi, said:—'I do not concur in the opinion as to the undesirability of allowing the villagers to elect their own panchayat."

The HON'BLE the PRESIDENT said:—"I think it should be pointed out that, the hon'ble member is quoting from a letter which was not written in reference to the present Bill."

The HON'BLE MR. WOODROFFE continued:—"I am sorry if I am speaking under a mistake, but the Bill of which MR. LOWIS is speaking was, as I understand, the first draft Bill and contained this provision:—' or he may with the previous sanction of the Local Government, direct that the adult male rate-paying inhabitants of the village shall elect, subject to any conditions and in any

manner and according to any rules that he may think fit, a person or a specified number of persons to be the panchayat or members of the panchayat for such village.' "

The HON'BLE MR. COTTON said:—"The remarks I made, and which the Advocate-General is traversing, had reference to the reports of Commissioners with reference to the Bill introduced by me into Council and to no other."

The HON'BLE MR. WOODROFFE said:—"That, I have gathered; but as I have pointed out the Bill which was introduced had practically the same clause as the amendment proposed by the HON'BLE MR. RISLEY. Of course, my observations must be taken with that restriction.

"Then the Magistrate of Champaran said:—'I would allow villages to elect the new members of the panchayat.'

"The Magistrate of Backergunge said:—'I see no objection to the elective principle.'

"The Commissioner of Patna writes:—'I think it questionable whether the elective system is likely to succeed so generally that it is desirable to make it the standard. Perhaps the Commissioner might fix for each district or sub-division whether the members should be appointed or elected;' and the Magistrate of Nadia said:—'I would introduce the election of panchayats only in a few advanced districts, and as an experimental measure for the present, and extend it gradually to more backward places if the measure is found to be successful.'

"I quote these Officers' opinions as speaking in favour of the principle of the amendment, with the limitations and safeguards contained in that amendment. No one has suggested that, it should be introduced as a rule, or save under the safeguards contained in the amendment. No doubt a great many, a very large number of officials, have written against it, but they were thinking of elections conducted on the lines of elections of Members of Parliament, or of Municipal Commissioners. But the HON'BLE MR. RISLEY deprecated that idea altogether, and it was wholly foreign to the purpose of his amendment. Some of the gentlemen who had written against it had done so on a ground which if valid at all it would be a good ground for reversing a great deal of the legislature of this country, and I would add some very recent legislation in the Houses of Parliament. If it is

not desired to obtain the opinion of the people of this country, then of course the matter may be disposed of upon principles of the most purely paternal Government. But, so far as I can form any opinion, they have not proceeded upon these lines. One Magistrate supports his opposition to the application of the elective principle to panchayats by reference to some recent utterances on the part of Lord Salisbury and Mr. Balfour, deprecating an appeal to the elective principle. Whether the noble Lord and his kinsman had in so delivering themselves that presage which dying men are supposed to have of the future, I know not; but at all events the principle of ascertaining from the people of the country what their wants and wishes were, what may be safely given, and what should be prudently withheld—has not been the curse of England. It has been the life and the backbone of England. Of course it is impossible to eradicate party feeling; but it has in England at least been by no means a hindrance to material prosperity. I have to apologise for detaining the Council so long upon matters on which I have, and can have, no personal knowledge. My knowledge is derived from what I have read, and from that which so far as I know has been the course of legislation in this country; and I can only say that, in a few instances which have come before me as to how the panchayat system works, that it works admirably, and is thoroughly understood by the people of the country. In those instances, I have found the most serious questions dealt with and disposed of by panchayats. The difficulties which are spoken of are, difficulties which arise from compulsory action from attempts to make unwilling servants work, and subjecting them to various kinds of trouble and annoyances; we, on the contrary, desire that they should regard themselves as the depositaries of a power to be exercised beneficially for the good of their co-villagers."

The Hon'ble Babu Gonesh Chunder Chunder said:—"I wish to add one word to the arguments in support of the amendment of the Hon'ble Mr. Risley. If this amendment is not accepted, the law will stand thus, and the section will run in this way:—

'The District Magistrate may, by an order in writing, appoint not less than three, nor more than five, residents in any village or group of villages, within the district of which he has charge, to be the panchayat thereof.'

"Under Act I (B.C.) of 1886, we know there is a very good provision giving the people some sort of voice in the selection of the panchayat.

It is now proposed to take away that voice of the people in the selection of the panchayat. Let us see how the provisions of Act I of 1886 were carried out. If you refer to the report of the Police Committee, and also to the report of Mr. Monro's Committee of 1883, you will find this. At page 19 of the report of the Police Committee, they say:—'Mr. Monro's Committee, it will be remembered, found that panchayats had not been judiciously selected, and attributed this in a great measure to the selection having been left to the Police.' So that we find that even when the law required it, the Magistrates had not been able to go to the spot and select the panchayat. They were obliged to rely on police reports in appointing the members of the panchayat, and if you leave the law as it is now, will not the same thing recur? The very evil you want to avoid will recur; for, when the Magistrates were required by law to go to the spot, they did not do so. They could not do so. How, then, would they now appoint the members of the panchayat? They would not go themselves or send their subordinate Magistrates to the spot, and the only means they would have, would be selection according to the police reports. I cannot myself think how otherwise the Magistrates will make their selections and appointments. They would remain at the sadar stations of their districts, and who would give them information as to the fitness of the men to be appointed? They must, of necessity, be obliged to depend on police reports, and we can very well imagine what the result will be.

"With reference to what the HON'BLE MR. COTTON has said, that the people of this country are the most aristocratic and conservative in their hearts, that educated Indians are not entirely in favour of the elective system, I would ask, how would he account for the opinions he has received from the several native associations? With all their aristocratic and conservative instincts, we find almost all of them in favour of the elective system."

The HON'BLE MR. ALLEN said:—"It is hardly fair that the whole of the arguments should be on one side, but I do not propose to detain the Council more than three or four minutes. The hon'ble mover of the amendment has given us a lengthy and minute account of his experiences in bengalee villages when he went there without his *chaprásis*. The wisdom and ability of those villagers as depicted by him are something deserving of the highest admiration; according to him they have a remarkable capacity for managing the most difficult and the most abstruse matters, if only they are left to themselves and

not worried. Obviously the question arises, how is it that with all this extraordinary capacity and with this combination of all the virtues which the HON'BLE MR. RISLEY has discovered in these acute zealous villagers, we are here to-day for the purpose of considering the propriety of appointing some sort of police to do the work in these villages? How is it that these very capable villagers have been so incapable of providing for their own security and for the protection of their own property? The chaukidars have been under their control for generations after generations, and it is because they have been an utter and complete failure that the necessity has arisen for the Central Government to look into the matter, and see whether the village chaukidar should not be subjected to some better and wiser control than that these very capable villagers have hitherto exercised. I am quite willing to admit that caste panchayats are in constant use, and do excellent work within their castes. The fact is that in caste, as its essence and its root, there is the element of religion, and panchayats within the caste have hitherto worked with reasonable efficiency. The religious sanction has not yet been cast off within the castes. Whether these caste panchayats are obtained by anything which can be called election, or whether the members of particular families have not the right to be the panchayat from generation to generation I cannot say; but this I can say that the very cohesion and efficiency of caste is the great obstacle to any organisation of villages which are mere local areas. Villagers are not connected now-a-days by blood descent or religious bonds as formerly they were. In those days the village consisted of men of the same caste, and any others allowed to attach themselves to it were in a position of subordination and subjection, and then the village system was a good system; excellent government was maintained, and things were kept in order. But all that has ceased, and villages are now formed by bringing together a number of separate bodies who have nothing in common except the local proximity. The very cohesion within the caste is an obstacle to cohesion out of it, and that is the reason probably why the panchayat system, so efficient in caste questions, has yet allowed the village organisations to fall into the state it has.

"A great deal of eloquence has been expended here to-day on what appears to me an exceedingly trifling matter. The principle of election has been worshipped as a fetish. Whereas, in this proposed section, it is for itself without any consequences. Election is a good principle or a bad principle, but election

which can be reduced to a nullity, which can, at any moment, be set aside, appears to me to be an idle thing; and an amendment which does not attempt to cut down the absolute power of the Magistrate to nullify the election may be very amusing as a play, but it is not solid work. If the hon'ble member would add a section, compelling the Magistrate to accept the selected panchayat, then there would be some meaning in his proposal. The Advocate-General has challenged the negation of this clause, as being practically a repeal of Act VI of 1870, as amended by Act I of 1886; but there is a vast difference between the amendment of the HON'BLE MR. RISLEY and the provision which existed in the amended section of the Act of 1870, viz., that the Magistrate should ascertain on the spot by any means he thinks best to employ the persons who, in the opinion of the villagers, are most proper to be appointed members of the panchayat. There it is the Magistrate who is to select; in this amendment it is the adult males of the village who are to select.

"There is nothing in the Bill as amended by the Select Committee to prevent the Magistrate from doing exactly what that section of Act VI of 1870 required him to do. It is perfectly open to him to do so, and I suppose there are few Magistrates who would think of appointing a panchayat without doing exactly what is laid down in the section. But to give the power of selection to the villagers is quite a different matter. The Advocate-General asks, if the principle of election is new? No, it is as old as the human race; and if the first election had not been what it was, we should not now be suffering as we now are."

The HON'BLE MR. WALLIS said:—"I should hesitate, Sir, at this stage to avail myself of the opportunity of speaking, were it not that I consider this is a question on which members are expected to give more than a silent vote; a question which should be discussed solely on its own merits, namely, as to the desirability or otherwise, in the public interests, of making a change in the existing system of appointing the members of the panchayat.

"I may be pardoned in thinking that, the idea of seriously considering the suggestion put forward by the Police Commission of 1871 to give the power to the adult rate-paying inhabitants of villages to elect the panchayat was a mistake; and it is little short of a misfortune that, the suggestion should have been given shape as set forth in the section of the draft Bill which it is now proposed by the majority of the Select Committee to omit.

[*Mr. Wallis.*]

"We are all well aware that there is nothing new in the proposal that, the Magistrate shall appoint the members of the panchayat, for we have this provision both in Act VI of 1870 and in the amending Act I of 1886; and it is solely on the recommendation of the Committee referred to that it was proposed that, the system of allowing the people to provide for the safety of their own persons and property in their own way should be further extended.

"It is admitted on all sides how very unpopular the position of a seat on the panchayat is, and how frequent the applications are to be permitted to resign. This, coupled with the fact that it has been found necessary, under section 8, to provide for a fine being inflicted on any person appointed to be a member of the panchayat refusing to undertake the office, goes to prove that the public spirit displayed by the rate-paying inhabitants of the villages is not so great as to insure the proposed system of election being appreciated, or the seats being warmly contested.

"The Committee, which recommended the introduction of this elective system, stated in their report that Act VI of 1870 may, in short, be defined as a timid and partial attempt to introduce into rural villages a sort of local self-government in criminal matters, and also stated that the working of the Act through a long series of years might be summed up in the one word 'failure.' They further state that it had been everywhere found necessary, in the interests of the public, for the Magistrate to interfere to secure the proper performance of the duties of the panchayat, and yet it is considered by some desirable to further extend this partial and timid attempt to introduce into rural villages a sort of local self-government in criminal matters.

"It is not probable that, under the proposed system of election we are likely to see an improvement in the constitution of the panchayat. It would, therefore, be most desirable for the Legislature, now that the existing Act is being amended, to make such provisions as are likely to bring about the improvements for which, I take it, the Act is being altered; and I am constrained to say that, this can only be done by continuing to allow the Magistrate to appoint the members of the panchayat, and by giving him more control over the rural police than he is at present able legally to exercise.

"It has been stated in this Council Chamber that, 'it was not the right to serve on the panchayat which was put up to auction, but the privilege of exemption.' Why, then, this desire for election?

"It has also been shown on the very highest authority that the work done by the panchayat is, the reverse of satisfactory. The Committee which was

appointed as far back as 1882 pointed out that, whatever measure of success had been attained was due in no small degree to police interference, and that the panchayat was not unjustly accused of under-assessing the rich and heavily taxing the poorer villagers, and the members of the Committee were unanimous in their condemnation of the then existing state of things. Such being the facts of the case, I venture to state that to give the election of the panchayat into the hands of land agents and illiterate villagers, would be to intensify the evils which exist.

"I am therefore strongly of opinion that the time has come when the panchayat and the rural police should be placed more under executive control, and I therefore give my cordial assent to the omission of sub-section (2) of section 2 from the Bill."

The HON'BLE MR. RISLEY in reply said:—"It is hardly necessary for me to trouble the Council with a reply, but there are three points to which it is well I should refer. *First*, as to the opinions of the Commissioners of Divisions. The Council will observe that at the instance of the HON'BLE MR. COTTON, I read out the opinion of each Commissioner as I referred to it, and the Council can judge whether the interpretation I have put upon them is the right one or not. *Secondly*, with reference to JOHN STUART MILL'S opinion, no one can have greater respect for the opinion of that writer than I. But he can hardly be cited in this connection. There seems to be both here and in Europe two kinds of police. There is the State police, which is equivalent to the Bengal constabulary, and there is the rural police, and what JOHN STUART MILL said had reference to a State police which is now the County police. In fact, I am under the impression that at the time when the treatise on representative Government was written, the village constabulary had not been amalgamated with the County police, and were paid by the poor rate guardians, who are an elected body. The same state of things exists in the north of Germany and in other places at the present time, where there is the regular police and the local police analogous to our village chaukidars. The one is under the State; the other is under the communal body, which is an elected body. MILL seems to refer in every case to the county police, the provincial police, and not to the local police who, in the places to which I have referred, are under local hands. In Austria as well, the village commune chooses the village police.

"As regards the remarks of the HON'BLE MR. ALLEN, as to the panchayat being an evil by reason of the chaukidar being bad, I do not know that it has any direct reference to the question before the Council. It is not by any

means clear to me that, the chaukidar is so bad as has been attempted to be made out, but I should prefer to discuss that point on the subsequent amendments."

The HON'BLE the PRESIDENT said:—"When this question was considered by the Government before the Bill was drawn, I considered it a point of so much difficulty that I thought it would be better it should be left to the decision of the Council, and I undertook to be guided by the views of the majority of the Council on this subject; and would not declare on the part of the Government any definite view as to whether the clause which has been struck out by the Select Committee, and which it is now proposed to re-introduce, should be retained or not. And I may congratulate myself on having taken this course, because undoubtedly the discussion has been one of very considerable ability, and has thrown great light on the question, and I think the conclusion to which the Council will come after having had the advantage of hearing all the speeches which have been made, and after considering all the information which has been obtained, will carry great weight with the public and conduce to the successful working of the Bill in the form which it will take. For my own part, it seems to me quite clear that the question is not so important as some hon'ble members have considered it. I cannot share the HON'BLE MR. COTTON'S view that, the principle of election will be in the highest degree injurious to the administration of the Department. Still less can I hold the view which has apparently influenced a great number of the independent bodies who have sent in their opinions to the Government, and who have been carried away by the charm of the blessed word 'election.' The point before us is—what is the best way of creating a panchayat? To this there can be only one answer, as far as regards the principle by which we should be governed; and it cannot be better stated than in the words of the HON'BLE MR. WOODROFFE that, the principle should be that of ascertaining the wants and wishes of the people. Both parties are entirely agreed on one important point, namely, that the leading man in a village does stand out and become visible to the whole of the people, whether he be called a *jeth raiyat*, or a *mondol* or a *máatibar*, or in the case of a caste, the panchayat, which, as the HON'BLE MR. RISLEY told us, grew like Topsy, and no one knows how it has been created. There are always one or more leading men in a village; the only question is, how to get them to be the panchayat; whether, as is done at present and as the HON'BLE MR. WALLIS has advocated, by appointing them through the Police officials,

or by any other system. The Committee appointed to consider the question gave their opinion very clearly, especially in paragraph 42, as to the shortcomings of the panchayats as now appointed, and then, as it seems to me, they rather rushed at their fence, and without stating any particular reason, said:—'This won't do; let us try a new plan; let us have election.' The use of the word 'election' has been unfortunate, for it has created in the minds of the people the idea that the procedure which was intended would be of a much more formal character than was contemplated, and it would have been more correctly indicated, as it has been described by the HON'BLE MR. RISLEY, as selection by acclamation. At any rate, I am glad the hon'ble member has excluded the word 'election' and substituted for it 'selection', which is a much more appropriate word to indicate what is intended. It seems to me, though I was rather surprised to hear the HON'BLE MR. ALLEN say the contrary, that what is proposed is not very different from the present law, namely, that the Magistrate shall go to the spot and ascertain the wishes of the people. That is the postulate which the HON'BLE MR. WOODROFFE has laid down, namely, that we should ascertain the wants and wishes of the people, and they will be ascertained by calling all the male adult villagers, putting them the question, and leaving them two or three hours to consider it; after which they would come forward and say—'Here are our leading men, appoint them to be our panchayat.' I cannot conceive of any Magistrate who would not consider this very much more likely to attain the desired result than calling upon the Sub-Inspector of Police to say who are the leading men in a village. But at the same time you will understand that there are great restrictions on the possibility of carrying out this procedure. The HON'BLE MR. WOODROFFE, assuming that others possess the great capacity for coping with work with which he has been gifted, has represented that the Magistrate can do this if he likes; but considering how hard our Magistrates are worked, and how many important duties they have to perform, it is evident that if they are to carry out in any large degree what is suggested here, they must leave other, perhaps more important, things undone. Indeed in such cases the question with any hard-worked man is, when a new task is imposed upon him, what is he to leave undone? The Judicial Department of the Government issues a circular enjoining on a Magistrate to do certain important things; the Financial Department urges him not to leave undone some other equally important things; the Revenue Department issues a circular impressing upon him that this is the most important thing of all, and must on no account be neglected; and with all these demands

[*The President.*]

upon his time, not being quite an Advocate-General, he is not able to do everything. Therefore, the result of the amendment will be, as Mr. Forbes has aptly said, that we shall have a somewhat piebald administration. We shall have some villages in which the panchayats are selected in this way, and others in which they are selected in the old way. It does not seem to me that this would be any drawback, but, on the contrary, that it would be rather desirable; for we shall have the opportunity of testing whether this is the best way of bringing the best men to act on the panchayat or not. If we find it is the best way, we shall be more willing to extend the system. But if it does not prove to be the best way, if we find that the most influential and the most prominent villagers manage that their names shall not be put forward, but that inferior men like that family servant who has been mentioned here are selected, then we would not extend it. On these grounds, I am bound to say that I entertain a very open mind on the subject, but on the whole I am in favour of the amendment. I think it cannot produce any serious evil, and is not likely to be very widely used; but so far as it will be used, and honestly and seriously used, it is very likely to do good."

The Motion being put, the Council divided:—

Ayes 5.	*Noes* 4.
The Hon'ble Babu Gonesh Chunder Chunder.	The Hon'ble Mr Wallis
The Hon'ble Maharaja Sir Harendra Kishore Sing Bahadur.	The Hon'ble Mr. Lambert.
The Hon'ble Dr. Mahendra Lal Sircar.	The Hon'ble Mr. Cotton.
The Hon'ble Mr. Risley.	The Hon'ble Mr. Allen.
The Hon'ble Mr. Woodroffe.	

So the Motion was carried.

The Council adjourned to Saturday, the 30th July, 1892.

CALCUTTA;
The 30th July, 1892.

E. W. ORMOND,
Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No 417G—300—11-8-92.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 30th July, 1892.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE J. T. WOODROFFE, *Offg. Advocate-General.*

The HON'BLE T. T. ALLEN.

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE J. LAMBERT, C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

The HON'BLE GONESH CHUNDER CHUNDER.

The HON'BLE P. PLAYFAIR.

NEW MEMBER.

The HON'BLE MR. PLAYFAIR took his seat in Council.

LICENSED JUTE WAREHOUSE AND FIRE-BRIGADE BILL.

THE HON'BLE MR. COTTON said :—"Before proceeding to the business of to-day's meeting, I will ask Your Honour's permission to be allowed to move that the name of the HON'BLE MR. PLAYFAIR be added to the Select Committee appointed to consider the Bill for the regulation of Warehouses and the maintenance of a Fire-Brigade. It will, I think, materially assist the deliberations of the Committee if we have the advantage of a member representing the mercantile community on it."

The Motion was put and agreed to.

VILLAGE CHAUKIDARI ACT, 1870, AMENDMENT BILL.

THE HON'BLE MR. COTTON moved that the clauses of the Bill to further amend the Village Chaukidari Act, 1870, be further considered in the form recommended by the Select Committee.

The Motion was put and agreed to.

[*Mr. Woodroffe.*]

The HON'BLE MR. WOODROFFE moved that in sub-section (*2*) of section 2 (which will now be sub-section (*3*) owing to the restoration of the sections relating to the selection of the members of the panchayat), there be inserted after the word 'may' the words 'from time to time by an order in writing'; and after the words 'subordinate to him' the words 'of the first class, and by the like order withdraw such delegated powers.' He said:—"In the Bill as amended by the Select Committee, the sub-section stands as follows:—'The District Magistrate may delegate his powers under this Act, either wholly or in part, to any Magistrate subordinate to him.' It is suggested by the Commissioner of Orissa, in his minute on this Bill of the 5th July, 1892, that the delegation should be in writing; and inasmuch as this sub-section is only for the purpose of enabling the District Magistrate to delegate his powers either wholly or in part, it has seemed to me desirable, to avoid all question of the extent of that delegation, that the order should be in writing. There will thus, I think, be avoided all questions of difficulty as to the duties which may be committed to any delegated authority under this section. I bear in mind the observation which fell from Your Honour on the last occasion as to the amount of work which is necessarily cast on the Magistrates in this country, and therefore, although at first sight it would seem undesirable that there should be any delegation, at the same time the administrative necessities of the case require that there must be some delegation. The question is to what extent. Under the Act which this Bill is amending the term 'Magistrate' is defined so as to mean and include a Sub-divisional officer. As far as I have been able to ascertain, by far the great majority of these sub-divisional officers are in possession of powers of the first class. Those who are not possessed of those powers, so far as I can ascertain, seem to fall under two classes. Those of whom the Government have had sufficient experience to justify the withholding from them of powers of the first class, and those who have not had sufficient experience to entitle them to receive the grant of such powers. If the power be limited, as I suggest, to Magistrates possessed of powers of the first class, it would, it seems to me, leave the position of affairs much as it is at present, but with this advantage, that the delegation would only be to those Magistrates who are possessed of full powers. Further there will, in regard to the amended provisions of sub-section (*1*) relating to the appointment of the panchayat by this amendment, be kept, as far as possible, in the hands of the Magistrate of the District, the important powers by this

section vested in him, of appointing three or four, up to the number of five, residents of the village to be the panchayat, and also the supervision, under the rules which may be passed by the Government, of the selection of members of the panchayat under the now restored sub-section (*2*). In my humble opinion the Magistrate of the District ought to be the first man in the district, and to be the first man in the district he requires to be the man who can do and does do everything. He is the person who should be most in touch with the people of the district, and I think it is therefore desirable that, as far as possible, certainly as regards the important powers we have conferred on the Magistrate of the District under this section, he should be the man who should discharge those duties himself, and if he is by stress of circumstances compelled to delegate his powers, it should be to persons fit in the opinion of the Government to exercise the full powers of a Magistrate of the first class.

"The last portion of the amendment is merely to avoid any difficulty which might arise as to the extent and period of delegation. And I think it very desirable that it should be provided in the law itself that there should be no doubt as to the Magistrate's power to withdraw the delegated power. For these reasons I move this amendment."

The Hon'ble Mr. Cotton said:—"I have given my best consideration to the proposal now put forward by the learned Advocate-General, and I may say at once that I am disposed to meet him half way, if not more than half way, by accepting the amendment that the Magistrate should be empowered to delegate his powers to Magistrates of the first class. As the law now stands, the Magistrate of the District is the only officer in the district who has the power of appointing or removing the members of the panchayat. He has no power under the Act to delegate his authority to any subordinate, but the Magistrate is defined to mean a Sub-divisional Magistrate, and it is the Sub-divisional Magistrate who exercises within the limits of his sub-division all the powers which the Act entrusts to Magistrates. This arrangement is practically inconvenient. It is inconvenient that the Magistrate of the District should be compelled himself to discharge duties which in a sub-division are discharged by a sub-divisional officer. There is no reason why the Magistrate of the District should not delegate these powers to a competent subordinate, and I agree with the learned Advocate-General as to the persons to whom the District Magistrate may delegate particular functions.

"But while I accept my hon'ble friend's amendment up to this point, I think that the alteration he suggests in the section will fail to give full effect to what is desirable in the amendment of the law. I think the Magistrate of the district should be empowered to delegate his powers not only to a Magistrate of the first class subordinate to him, but also to any Sub-divisional officer. As a rule, Sub-divisional officers exercise powers of the first class, but they do not always do so, and it would be highly inconvenient to exclude officers under this Act who are not invested with full powers. And now, with Your Honour's permission, I will proceed to discuss the amendment which has been notified in my name, namely, that the Magistrate of the district be empowered to delegate his authority not only to a Magistrate as specified in the section, but also to a District Superintendent of Police. This provision is primarily adopted from the law as I find it, except in the Bombay Presidency."

[The HON'BLE MR. WOODROFFE rose to order, and asked whether, in the opinion of the President, it was competent to the hon'ble member to bring into the discussion of Mr. Woodroffe's amendment the discussion of an amendment which stands in the Hon'ble Mr. Cotton's name.]

[The HON'BLE THE PRESIDENT observed that, unless the Council think the amalgamation of the two amendments would be convenient, it would be better perhaps to keep them separate; or perhaps he should rather say that, unless the Advocate-General agrees to have the question of delegation to the District Superintendent of Police, raised along with the question of delegation to a Magistrate of the first class, it would be better to take them separately. He understood that the Advocate-General wished the two questions to be considered separately, and he would therefore ask the Hon'ble Mr. Cotton to confine his remarks to the amendment now before the Council.]

The HON'BLE MR COTTON resumed:—"I find some difficulty in voting upon the Advocate-General's amendment as it stands. If the amendment is passed, the section will run thus:—'The Magistrate of the district may from time to time, by an order in writing, delegate his powers under this Act, either wholly or in part, to any Magistrate subordinate to him of the first class.' What I propose to bring before the Council is a somewhat large proposal which will virtually include all that is proposed by the Advocate-General. But as the question stands now upon the amendment of the Advocate-General, I cannot agree to extend the power of delegation to Magistrates of the first class, unless it

is also added that the delegation may be to any Sub-divisional officer of any district. I therefore suggest the addition to the amendment of the words 'or to any Sub-divisional Magistrate of the district.'

"There is one other point which I wish to bring before the Council, namely, that such power should not be delegated by the Magistrate of his own motion without the sanction of higher authority. It is no doubt a very important function which we contemplate should be delegated by Magistrates to their subordinates. It is possible, although I think it highly improbable, that these powers may be abused in some cases, and therefore, in order to guard against any risk of abuse, I propose to introduce into this section a further clause which will make the sub-section run thus:—'The Magistrate of the district may from time to time with the sanction of the Commissioner of the Division, by an order in writing, delegate his powers under this Act either wholly or in part to any Magistrate subordinate to him of the first class or to any Magistrate in charge of a sub-division, and may, by like order, withdraw such delegated power.'

"This provision I have adopted from the Bombay Act, which empowers the Magistrate of the district, with the sanction of the Commissioner ('under the direction and control of the Commissioner of Police' are the exact words) to delegate his authority to any Magistrate and also to any District Superintendent of Police. The point which I am now making is that the sanction of the Commissioner of the Division should be required where powers are delegated to subordinate officers."

The HON'BLE MR. WOODROFFE said:—"I accept the suggested addition of the words 'with the sanction of the Commissioner of the Division.' And inasmuch as the objection which I had to delegating powers to any other Magistrate than a Magistrate of the first class has been in great measure removed by the restriction the Hon'ble Mr. Cotton proposes, namely, the sanction of the Commissioner of the Division, and as it appears that there are but few Sub-divisional Magistrates who are not possessed of first class powers, I would, with the permission of the Council, accept also the suggested addition of the words 'or to any Magistrate in charge of a sub-division.'"

The HON'BLE THE PRESIDENT then put the amendment as altered and accepted by the Hon'ble Mr. Woodroffe, and which would make the sub-section stand as stated above by the Hon'ble Mr. Cotton.

The Motion as thus amended was put and agreed to.

The HON'BLE MR. COTTON moved that in sub-section (*2*) of section 2 there be inserted after the words 'Magistrate in charge of a sub-division,' in the amendment just accepted by the Council, the words 'or to the District Superintendent of Police.' He said:—"The effect of this proposal will be that the Magistrate will be empowered to delegate his powers under this Act, with the sanction of the Commissioner of the Division, to the District Superintendent of Police, as well as to a subordinate Magistrate of the first class, &c. The suggestion to empower the District Superintendent of Police in this manner is derived primarily from the procedure adopted in the Bombay Presidency. Under Bombay Act VIII of 1867 relating to the village police, it is declared to be lawful for the Magistrate of the district, with the sanction of the Commissioner of Police, to depute to the District Superintendent of Police any authority which may be exercised by the Magistrate over any village police officer. That is the law in Bombay, and in Bengal the Chutia Nagpur Village Act [VII (B.C.) of 1887] entrusts similar authority to the District Superintendent of Police, and this is in accordance with the history of the administration of the village police in these provinces. In the earliest times of the British Government, that is to say from the time of the Regulations of 1793, it has been laid down by the law that the village police shall be under the control and regulation of the police daroga as he is called in the old Regulations, corresponding to the present Inspector or Sub-Inspector of Police, and in a clause of section 21 of Regulation XX of 1817, which was a law relating both to the police and village police, but which has been superseded by Act VI of 1870 wherever the more recent Act has come into force, it is distinctly declared that the village watchmen are subject to the orders of the police darogas. Well, that Regulation of 1817 is now formally in force in Bengal in all villages where Act VI of 1870 has not been extended. I speak in round numbers, but this old Regulation is still applicable to the relations between the village watch and the police darogas in the case of about 70,000 or 80,000 chaukidars, a very large proportion of the chaukidars in this province, nearly one-half, but not quite. To this very large number of men the Regulation applies. To the Police Sub-Inspector, and therefore to the District Superintendent of Police, who is the officer placed immediately over the Police Sub-Inspector, the village watch is subordinate; he is declared to be subject to their orders and control. Therefore the amendment which I have brought forward, declaring that it shall be competent for the Magistrate to delegate his powers under the Village Chaukidari Act to the District Superinten-

dent of Police, would practically not alter the position of affairs in a large portion of the province. It is quite true that this power, if it is availed of, will alter the relations between the District Superintendent of Police and the village watch in such localities as Act VI of 1870 has been extended to. The Act of 1870 makes no mention of the District Superintendent of Police, and no doubt designedly. At the time that that law was passed the position of the District Superintendent of Police was not clearly defined or understood. The District Superintendent claimed and exercised a position of some independence from the District Magistrate. It was not until a year or two after the passing of this Act that Sir George Campbell declared by executive order that the District Superintendent was the subordinate and the right-hand man of the District Magistrate for executive purposes, and when Act VI of 1870 was passed it was thought expedient that all power and control in regard to the village watch should rest with the Magisterial authorities only, not with the heads of the department. However, there has been some change since those times, and there is now no doubt in the minds of any one as to the exact position and relations between the Magistrate of the district and the District Superintendent. In these circumstances, it was thought it would be administratively convenient to empower the Magistrate of the district to delegate his authority, subject to the sanction of the Commissioner, to the District Superintendent of Police, if he should wish to do so in preference to any Magisterial officer subordinate to him. By such delegation, as I have said, he will be merely giving effect to the principle which underlies all the old Regulations in Bengal with regard to the relations between the village watch and the regular police. At the same time the power, if so delegated, will have a tendency to result in the improved organisation of the village watch, which is one of the main objects of the Bill which I have introduced into this Council."

The Hon'ble Mr. Woodroffe said :—"I feel compelled to vote against the proposed amendment, and it is because it seemed to me to be quite apart from the amendment which has recently occupied the attention of the Council, that I asked that it might be considered separately. It appears to be an amendment which is at variance, entire variance, with the Acts which this Bill has been brought in for the purpose of amending. The Regulation under which the village watchmen were dealt with prior to the Act of 1870, the second portion

of section 21 of Regulation XX of 1817, declared that the village watchmen are to be subject to the orders of the police daroga. That section was by section 2 of Regulation VI of 1870 repealed as to all districts to which Act VI of 1870 of this Council extends."

[The HON'BLE MR. COTTON:—The section of Regulation XX of 1817 was not repealed as to all *districts* to which Act VI of 1870 might be applied, but to all *villages* to which the Act shall be extended—a very different thing.]

The HON'BLE MR. WOODROFFE continued:—"Accepting the verbal criticism, it still remains that there is a distinction which still exists, and which it is the object of this amendment to get rid of. Now I cannot but think that this alteration was introduced for the purpose of giving freer play to the panchayat in the management of village affairs, and one has only to read the report of the Police Commission to see that in a large measure the comparative failure of Act VI of 1870 has been owing to what Mr. McNeile has in his report in 1866 described as police interference not contemplated by the law. It is now sought by this amendment to legalise that very action which, as far as I read this report, has tended to paralyse the intentions of the Legislature, and it is apparently introduced for the purpose of destroying the character which the village police has, as distinguished from that of the regular police. When the Bill of 1870 was brought in by Mr. (afterwards Sir) Rivers Thompson, it proceeded in recognition of the fact that the rural police were a municipal institution, a link between the regular police and the people. It is now intended by this amendment, as far as may be, to destroy that character by subordinating the village chaukidar, and not only the village chaukidar, but also the village panchayat, to the District Superintendent of Police. In this amendment in the way it is introduced there is no limitation. It applies equally to the power of appointing members of the panchayat as to any control over the chaukidars. This is indeed a retrograde step in one sense, and it is an advance in a very dangerous direction in another. Mr. Westmacott, Commissioner of the Presidency Division, in 1891, in his minute on this Bill, says that the 'thána constable appears to be quite as bad as the village chaukidar, and the thána sub-inspector and head-constable as bad as the village panchayat, and the thána system appears to me by no means so good that the absorption of the chaukidar into the thána would improve them: we will gain nothing by making the chaukidari subordinate to the thána sub-inspector.' Now by Act V of 1861, section 47, (the Police Act),

it is provided that 'it shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village watchman or other village police officer for the purposes of police shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.'

"Under that Act various orders have from time to time been issued by the Local Government, and they were confined to the purposes for which the Act enabled them to be issued, namely, for the purposes of police. So far, therefore, as any control by the District Superintendent over the village watchman for police purposes is concerned, the law as it stands at present is ample. The village watchman occupies a two-fold position in the district. He has duties to perform in relation to the village, and for the well-being of the village he has duties to perform towards the authorities; and that dual position is by law fully recognized and established. But to subordinate the panchayat, which can be done under this amendment of the Hon'ble Mr. Cotton, to the District Superintendent of Police, is something which has not been heard of before. It is, in fact, to import into this Act an entirely foreign element. And, as I pointed out to the Council, as far as the control over the chaukidar is concerned for purposes of police, the law gives sufficient authority to the District Superintendent of Police. If, as I believe, the aim and object of this Government is to secure the co-operation of as able and independent a body of men as possible with the Magistrate in matters properly belonging to the village, the introduction of another authority in the person of the District Superintendent of Police would, I submit, not only frustrate that aim, but also prove destructive to a very great extent of the principle of the Act which this Bill has been brought in to amend; and therefore I must record my vote against the amendment."

The Hon'ble Mr. Lambert said:—"This is, I think, the first occasion on which the District Superintendent of Police has been named in any Bill relating to the village chaukidar, and I desire to say a few words regarding the relations that should exist between the office of District Superintendent and the rural police. Under Act VI of 1870 and the two amending Acts, the Magistrate has powers of control over two separate bodies—over the panchayats and over village chaukidars. By the section now under consideration, it is proposed that the Magistrate should be authorised to delegate these powers, wholly or in part,

to officers subordinate to him, either to other Magistrates, or to the District Superintendent of Police. The duty of exercising control over the panchayats may, perhaps, be delegated to subordinate Magistrates, more properly than to the District Superintendent. But it seems clear that, subject to the control of the District Magistrate, the proper person to supervise the rural police is the District Superintendent. The omission of all mention of the District Superintendent in the Bill which was framed in 1870, is explained by the Committee which met in 1890. The explanation is that, in 1870, the relations of the Magistrate and the District Superintendent were not very accurately defined, and it was felt that to confer separate powers on the District Superintendent might result in executive inconvenience. This difficulty exists no longer. The District Superintendent is declared to be the assistant of the Magistrate, and thus, when in any district crime is dealt with inefficiently, the District Magistrate and the District Superintendent are the officers who are held responsible. Therefore to debar the Magistrate from delegating his powers of supervision to his assistant, the head of the police, seems unreasonable. From the nature of his duties, the District Superintendent has greater facilities for exercising the supervision needed, and the work more properly devolves on him than on the Magistrate, who has multifarious calls on his time. The reports of the two Committees appointed in 1882 and 1890, to consider the working of the rural police, show that in all districts where Act VI has been worked with any measure of success, the Magistrate of the district has employed the District Superintendent to supervise the rural police. All that is now proposed is that this practice should have the sanction of the law—no real change will be made. And it should be borne in mind that Act VI of 1870 applies only to about 90,000 chaukidars. Out of 170,000 upwards of 70,000 chaukidars are still maintained under Regulation XX of 1817, and by this Regulation chaukidars are declared subordinate to all police daregas. It seems anomalous that in two contiguous districts different systems should be in force in matters affecting the entire criminal administration."

The HON'BLE MR. ALLEN said:—"The argument in favour of the amendment of the Hon'ble Mr. Cotton proceed entirely on one aspect of the case, and that is the necessity for the chaukidars being placed, in the discharge of their duties, under the supervision of the District Superintendent of Police. But that can be done under the provisions of the Police Act of 1861. The Act with which

we are concerned at present is not an Act dealing with the functions of the chaukidar after he has been created, but an Act which was passed in order to create the chaukidar, to call into existence those persons who, under the Police Act, immediately on coming into existence, pass under the executive control of the District Superintendent. The amendment which the Hon'ble Mr. Cotton now brings forward proposes to enable the District Magistrate to delegate to the District Superintendent of Police any of his powers under this Act, that is to say, Act VI of 1870 as amended by this Bill. Now the powers of the District Magistrate under Act VI of 1870 are limited to calling into existence the panchayat and to getting rid of them. All other powers under the Act are not powers of the District Magistrate, but powers of the Magistrate.

"It is a little over a year since we met here to pass a Bill which was necessitated by the executive having, in the certificate procedure, treated the Collector of the district and the Collector as one and the same functionary. A decision of the High Court had declared that they were distinct functionaries, and that the Collector was not the Collector of the district, and that the Collector of the district was not the Collector. Therefore if this amendment passes, we may have some decision declaring that vesting the District Superintendent with powers of the District Magistrate does not give him the powers of the Magistrate, and yet the District Magistrate has no particular powers given to him throughout all the sections of the Act, except in two. The rest are worded as for 'Magistrate.' The word 'Magistrate' is defined, and in Act VI of 1870, as amended by the Act of 1886, there are only two sections where the words 'Magistrate of the district' occur. Section 3 runs:—'It shall be lawful for the Magistrate of the district,' &c, to appoint the panchayat. And the other section is section 10 giving him power to remove any member. In this Bill as amended by the Select Committee, some further powers are given to the District Magistrate; for instance, he may, by order in writing, declare any local area or group of dwellings to be a village. These are apparently the only powers reserved for the District Magistrate under the Act as amended by our Bill, and I cannot see that there is any necessity that these powers should be transferred to the District Superintendent of Police. All powers of control over the chaukidar, in the matter of investigating crime and preventing crime, can be given to the District Superintendent of Police under the Act of 1861. I therefore think that the passing of the amendment in its present form may lead to confusion. If it is desired to persist in the amendment, it should be provided, not that the powers of the

District Magistrate may be delegated to the District Superintendent, but the powers of a Magistrate. That is for the Council to decide. I for myself cannot see that there is any good reason for it."

The HON'BLE MR. RISLEY said:—"I will not attempt to follow the Hon'ble Mr. Allen on the legal point which he has raised. I wish merely to state to the Council the practical reasons which justify the motion now put before them to enable the Magistrate of the district to delegate his powers under this Act to the District Superintendent of Police. The justification of the motion is to be found in my view in the very material difference that exists between Bengal and all or most other provinces of India in respect of the agency at the disposal of the district officer for the purpose of carrying out executive business of any kind. A familiar illustration of that is the census. In most other provinces in India, I believe in almost all, there exists, owing to their revenue system, a variety of officers called tahsildars, mamlatdars, and so forth, whose main business is the collection of the revenue, but who, as a matter of fact, are the working instruments of the district officer for general executive purposes. In Bengal it is hardly too much to say that there is absolutely no executive agency subordinate to the Magistrate except the police, and the result is that, when census operations are being organised and carried out, the Magistrate is virtually compelled to employ the police on a variety of functions which are entirely alien to their proper duties. I have myself employed sub-inspectors and head-constables of Police on testing the boundaries of survey villages, and ascertaining what hamlets were included in the area demarcated by the survey. This was work which had nothing to do with police business, and for which the police were in no way qualified. But there was no one else to do it, and it had to be done. The same may be said of many other executive matters, which will occur to any one with district experience. Things have to be done, and if they are to be done efficiently, the police are the only agency that can be employed.

"I imagine that no one is likely to suspect me of any half-heartedness as regards the extension of the panchayat. As I said last week, I believe it to be well suited to the needs of villages, and I desire to see it extended. But it is perfectly clear that if the extension of the panchayat is to be left to the Magistrate's invididual exertions, it must necessarily progress very slowly. The magisterial staff of a district is so overburdened with judicial duties that the officers composing it cannot be employed regularly or on a large scale in visiting

villages for the purpose of introducing the panchayat system. If the District Magistrate is limited to this agency, we need not expect to hear of many elective panchayats. If, on the other hand, it is open to the Magistrate to use his discretion in employing the District Superintendent of Police to extend the system and to select the panchayat, we may rely on the introduction being more rapid and more effective. We must of course take it for granted that District Superintendents who are entrusted with the extension of the elective system will be ready to sink their personal opinions, and that officers who have strong prejudices against selection by the villagers will not be picked out to have the requisite powers delegated to them. Subject to this condition, the amendment now proposed will have the effect of enlisting the great influence of the Police Department on the side of the panchayat system generally, and will be a source of strength in every way. Moreover, owing to the fact that the police is the only agency that the Magistrate has at his disposal, the question comes to be a kind of Hobson's choice. Either the police must do the business and be responsible for it in a fair and open way, or if it is not done expressly and statedly by the police, it will be done on the report of the police. They will determine the issue, but will not be responsible for the result. Obviously the Magistrate cannot be personally acquainted with the circumstances of every village in his district, and the only persons on whose information he can possibly act in matters of this sort are the regular police. I may mention here that the Police Committee were well aware of this fact. It was their wish to strengthen the Magistrate's hands by providing him with officers of a somewhat different type, who would form a channel of communication between him and the regular police in this matter. They proposed circle officers for the express purpose of supervising the village police. That proposal has been found impracticable on financial and other grounds, and I only refer to it here in order to show the point of view from which the Police Committee regarded the matter, a point of view which explains the necessity of the present amendment. These are the reasons which satisfy me that it is necessary to empower the Magistrate to delegate his power to the District Superintendent, if any material progress is to be made in introducing the Act."

THE HON'BLE THE PRESIDENT said:—"I have only a few words to say on this amendment, but I wish to express how entirely I concur with the view taken by the Hon'ble Mr. Lambert in his treatment of this question. The remarks put

forward by the Hon'ble Mr. Allen and the Hon'ble Mr. Risley just now, although they take the same side as I do, are prompted by a different conception of the case from mine. The Hon'ble Mr. Allen's remarks rested chiefly on the necessity of putting the chaukidar under the Police Department, and the Hon'ble Mr. Risley also has spoken as if the intention is to give the police as a body power over the panchayats, taking them as a whole. The view I take of the question is simply a plain executive view. Here you have the Magistrate of the district with very heavy duties to perform, and though, as the Hon'ble Mr. Allen has said, in the original Act, VI of 1870, the Magistrate of the district as such is only mentioned in two sections, yet in our amending Act there are three other important sections which restrict power to him alone, and do not give it to the Magistrate in the abstract; therefore the Magistrate of the district has to perform certain very important duties in respect of this Bill.

"The Hon'ble Mr. Woodrolfe's amendment gives the Magistrate of the district power to delegate his functions under the Act to any Magistrate of a sub-division, or to any Magistrate of the first class subordinate to him. In most cases the Sadar sub-division is the most important part of the district, and in some districts there are no sub-divisions at all. What assistance will he have for carrying out the procedure under this Act, in particular that part of the procedure to which some of us attach great importance—the new method of creating panchayats by selection or acclamation? He has generally under him about two Deputy Magistrates of the first class. One of them has probably the charge of treasury work and cannot go out of the station. He would only have the other Deputy Magistrate whom he could send about to carry out this duty of presiding over the deliberations of the villagers in selecting their panchayats. But there is also at his right hand a most influential and experienced officer in the District Superintendent of Police, and one whose occupations specially connect him with this subject and do not distract his attention from it. So what we propose by this amendment is to recognise him as a valuable assistant to the district Magistrate in carrying out the provisions of this Act. I rather deprecate speaking of the police as a department in this question, or assuming that we are placing the chaukidar under the police as a whole. The amendment places him under the District Superintendent, not under the police; and we have further the restriction which you have very wisely put, that the Magistrate cannot delegate his powers without the sanction of the Commissioner of the Division, and that he must do so in writing.

[*The President; Babu Gonesh Chunder Chunder*]

"I therefore trust that the question will so approve itself to you that you will agree that there is no danger, such as might be anticipated, of any evil influence of the police being exercised over the chaukidar; while I think it will serve to give the Magistrate another valuable assistant in carrying out the working of the Act."

The HON'BLE MR. COTTON'S amendment was then put to the vote and carried on the following division:—

Ayes 7.	*Noes* 4.
The Hon'ble Mr. Playfair.	The Hon'ble Babu Gonesh Chunder Chunder.
„ „ Maharajah Sir Harendra Kishore Sing Bahadur.	„ „ Dr. Mahendra Lal Sircar.
„ „ Mr. Wallis.	„ „ Mr. Allen
„ „ Shahzada Mahommed Furrokh Shah.	„ „ Mr Woodroffe
„ „ Mr. Lambert	
„ „ Mr. Risley	
„ „ Mr. Cotton.	

The HON'BLE BABU GONESH CHUNDER CHUNDER moved that for section 4 the following be substituted:—

'The panchayat shall, subject to the control of the District Magistrate, determine the number of chaukidars to be employed in a village:

Provided that there shall be at least two chaukidars appointed in every village in which there are 150 houses, and one additional chaukidar for every complete 100 houses beyond such number:

Provided further that, without the sanction of the Commissioner, there shall not be more than one chaukidar for every 60 houses'

He said:—"As the principle involved in all the three amendments which stand in my name is the same, I wish first to make some remarks which will apply to all of them, and then to deal with each of them afterwards. The object of sections 4, 5 and 8 of the present Bill is to withdraw from the panchayats certain powers which they have hitherto exercised, and to place them in the hands of the Magistrate. These powers are, first, the determination of the number of chaukidars in the village; secondly, the fixing of the salaries of the chaukidar within certain limits prescribed by the Act; and thirdly, the appointment of chaukidars. It was said by the hon'ble member in charge of the Bill that this was a step in the direction of bringing the village police into closer relations with

the Government, and to strengthen the control of the executive over the village police. I should have thought the best way to effect that object would be to departmentalise the whole village police, to bring it under one system, and thus strike a blow at the root of the municipalised village police. But there is a difficulty—a serious difficulty—in the way; for, as was pointed out by the learned Advocate-General at the last meeting, that in that case the Government would have to take upon itself the payment of the whole cost of maintaining the village police, as it does for its regular police, and to abolish the chaukidari tax altogether. The village police in this country from time immemorial has been a purely municipal institution, because it has been maintained at the cost of the villagers, and its control has been in the hands of the village communities. By this Bill it is proposed to destroy the municipal character of the village police so far as its control is concerned, but in so far as the cost of its maintenance is concerned, its municipal character is to be preserved. I venture to think that it will neither be fair nor equitable for the Government to tell the people of the country living in villages, 'we have hitherto allowed you to enjoy certain rights and powers of control over the village police for which you have had to pay; we will now take away those rights and powers from you, but you must continue to pay all the same.'

"It is said that the village watch in England has been abolished, and the power of control of the villagers has been taken way. It is perfectly true that the village watch, which was established in England in 1833 upon a purely representative and municipal basis, has been abolished, but in its place the people of England have now got the county and the borough police, which are no less representative and municipal institutions than the village police which has been abolished; for they are maintained from local funds, and their control is in the hands of a joint committee consisting of the Justices of the Quarter Sessions and the County Councillors under the Local Government Act of 1888, and this notwithstanding the opinion of John Stuart Mill. If these powers are taken away from the panchayats, you reduce them merely to an assessing and tax-collecting body. They will have no power whatever over the village police.

"In order to come to a just conclusion whether these powers should be taken away from the panchayat or not, it is necessary to look back to the history of the legislation on the subject. Before 1817 the villagers in this country were allowed to maintain their own police, and to have full control over them without any interference on the part of the Government. In fact their position was just the

same as that of every man now who is allowed to have his own *durwan* in his own house. In 1817, for the first time by Bengal Regulation XX of 1817, the Government recognised these village watchmen. By that Regulation the appointment and control over them was allowed to remain with the villagers. It only required that these village chaukidars should register themselves at the nearest thánas, and it imposed certain duties on them to act as an informing agency to the regular police in respect of certain crimes committed within their respective villages. But that fact alone did not make them regular policemen in any sense of the term, as was said by the learned Advocate-General at the last meeting. They continued to be servants of the villagers. This state of things continued for over forty years, and in 1859 this matter was enquired into by Mr. (afterwards Sir Henry) Ricketts, who introduced a Bill into Council proposing that the appointment and dismissal of the village watchman should be in the hands and under the control of the Magistrate. That Bill was dropped, and nothing further was done till the year 1863, when Mr. (afterwards Sir Charles) Hobhouse was asked by the Government to make a report on the subject of the reorganisation of the village police in Bengal. His report suggested that the fund for the payment of the village police should be supplied by the landed proprietors or heads of village communities, but the management and employment of the force, its appointment, organization, dismissal and payment were to be entirely independent of the zamindars or village communities, but should be vested in the District Superintendent of Police subject to the general control of the Magistrate. Those recommendations were opposed by the native community of this province, with the result that nothing was done on that report. Then in the year 1866 Mr. D. J. McNeile was appointed special officer to investigate the subject *de novo*. He proposed the entire abolition of the village watch, and the appointment in its place of a body of policemen to be selected and appointed by the executive authorities, the entire force being in direct subordination to the regular police. This was strenuously opposed by the native community, and the grounds upon which they opposed it were these:—First, that the change proposed was a revolution and not a reform; secondly, that the absence of such a link as the village police between the regular police and the people would always work unsatisfactorily; and thirdly, that it was contrary to the wishes of the native community and subversive of the principle upon which the village watch had been always recognised as a village institution. The result of that

opposition was the introduction of the Bill of 1870, when all these reports and recommendations were fully considered and deliberated upon, and Act VI of 1870 was passed.

"Now let us see what that Act did with regard to these powers of the panchayat. These three powers were dealt with by sections 11, 12, and 35 of the Act. Section 11 provides as follows:—

'The panchayat shall determine the number of chaukidars to be employed in a village: provided that there shall be at least two chaukidars appointed in every village in which there are 150 houses, and one additional chaukidar for every complete number of 100 houses beyond such number of 150.'

"So that they allowed this particular power to remain in the hands of the panchayat, imposing one single condition only, and that condition, as I have shown, is contained in a proviso to that section. Then section 12 provides that 'the panchayat shall from time to time determine the monthly salaries of the chaukidars to be appointed: provided that such salaries shall not be less than three nor more than six rupees per month.'

"In this section also they allowed the panchayat to retain their power; they only put certain limitations to the salary of the chaukidar. And by section 35 they enacted that 'the panchayat shall appoint the persons to be chaukidars under this Act, and may from time to time, with the sanction of the Magistrate, dismiss any such chaukidars.'

"So that with the power of appointment and dismissal of the chaukidar, which they had before, there was no interference at all. This Act was allowed to be worked for nearly 13 years, when in 1883 another Committee was appointed to enquire into the working of this Act. That Committee is better known by the name of Mr. Monro's Committee. It made its report in 1883, recommending, first, that the chaukidar should be nominated by the panchayat, their fitness was to be reported upon by the police, and the nomination was to be confirmed by the Magistrate. Secondly, they recommended that it would be preferable to leave it to the panchayat to determine the number of the chaukidars to be employed subject to the control of the Magistrate; and lastly, that the question of pay should be left to the Government to determine from time to time according to local circumstances. Mr. Westmacott, one of the members of that Committee, dissented from that report, and would leave the powers and duties of the panchayats untouched. The report of Mr. Monro's Committee was circulated to all the officers of the Government, when Mr.

D. R. Lyall in 1884, not only sent in a report, but drafted a Bill founded upon the recommendations of the last-mentioned Committee, providing, among other things, that the chaukidars should be appointed by the panchayat as before, but subject to the approval of the Magistrate. Second, that the District Superintendent should give the man so appointed a certificate of appointment which would specify the rate of pay he was to draw, and be registered at the thána.

"After this the whole matter came before this Council in 1886, when all the previous reports and recommendations made by the officers of Government and by Committees after the passing of the Act of 1870 were fully discussed, sifted and deliberated upon, with the result that Act I of 1886 was passed, and by that Act all those powers of which I am speaking were left untouched. Then, about three or four years after the passing of Act I of 1886, in September 1890, the Committee for the reform of the police of the Lower Provinces of Bengal was appointed by the Government, and this Committee went into an elaborate enquiry into the village chaukidari system. I shall here observe that the enquiries of this Committee were not directed to what took place since Act I of 1886 came into operation, but they embraced all those grounds upon which the former reports and recommendations were founded, which were exhaustively considered and deliberated upon by this Council in 1886, and the Police Committee re-opened all the questions which were finally determined and set at rest by this Council in 1886.

"Let us see even under these circumstances what this report says with reference to these powers of the panchayat. I find on page 22 of the report the following:—

'In the Presidency Division the number of chaukidars is practically fixed by the Magistrates of districts. A tendency has occasionally been observed on the part of panchayats to appoint a smaller number of chaukidars than the law requires, but this has been checked by the Magistrate on the matter being reported to him by the police. In some cases also when, owing to the size of a village having increased, a larger number of chaukidars is required, the police have reported the fact to the Magistrate, who has issued orders to the panchayats.

'In the Burdwan Division also the District Magistrates fix the number of chaukidars on the legal scale, and no reduction is allowed without reference to them. The same practice is in force in the Rajshahi Division. The Magistrate of Rangpur remarks:—'Panchayats are not allowed to have their own way in these matters; for if they were, the chaukidari force would be reduced to a mere shadow. Practically it is the Magistrate who, after police enquiry, decides whether any reductions are practicable, or whether any increase or re-distribution of chaukidars' beats should be made. But in all cases attention is paid to the representations of

panchayats, which are freely made.' In the Dacca Division the determination of the number of chaukidars appears to be left to the panchayats, but the Magistrates have frequently had to interfere to restrain panchayats from reducing the number of chaukidars below the legal scale. In the Chittagong Division the allotment of chaukidars is everywhere regulated according to the legal scale on representations from the panchayats, which are dealt with by the Magistrate.'

"We find then that in most places the panchayats were not allowed by the Magistrates to exercise the powers which the law gave them, on the ground that in some places there was found a tendency to reduce the number of chaukidars, and that therefore, without any warrant of law, the Magistrates themselves encroached on the rights of the panchayats and took it upon themselves to determine the number of chaukidars to be employed in the villages. And this is the recommendation of the Police Committee following immediately after the above extract:—

'It will thus be seen that, though the law contemplates that the determination of the number of chaukidars shall be left to the panchayat, it has everywhere been found necessary in the interest of the public for the Magistrate to interfere to secure the proper performance of this duty by the panchayats. Such interference, though not strictly warranted by the law, may be brought within the scope of section 62, and is justified by the necessities of the case. In any new law that may be passed, it should, we think, be expressly legalized. In other words, the panchayat should exercise the power conferred on it by section 11 of Act VI of fixing the number of chaukidars, subject to the confirmation of the Magistrate.'

Now what is the proposal—

[The HON'BLE MR. COTTON having referred the speaker to paragraph 40 of the report, the following extract from it was read:—'Under all the circumstances of the case, it seems to us that it would be better not to fix any limit by law, but to leave the number of chaukidars to be employed and the area in charge of each to the discretion of the local officers.']

The HON'BLE BABU GONESH CHUNDER CHUNDER, continuing, said:—"I quite see that it does not touch this point at all. I say, with regard to the determining of the number of chaukidars, the recommendation of the Committee is that that power should be left untouched in the hands of the panchayat, but subject to the controlling power of the Magistrate. Now what did the present Bill propose? It proposed that the District Magistrate should determine the number of chaukidars to be employed in a village. The section stopped there. The

Select Committee at their first meeting passed the section in that state, but afterwards an admirable note of Mr. Nolan was put before them, in which it was shown how dangerous it would be not to put any control on the Magistrate in fixing the number of chaukidars, and that in that case the Magistrate would be in a position to increase the chaukidari tax to any extent he liked. The Select Committee felt the weight of that opinion, and they fixed a maximum limit to the power of the Magistrate to appoint chaukidars, that is to say, they fixed the limit at one chaukidar to 60 houses. That is the maximum limit.

"Now, taking all these circumstances into consideration, especially the circumstance that these very matters were considered at full length and discussed and deliberated upon by this Council in 1886, and that nothing can be pointed out, either from the Report of the Police Committee or any of the reports circulated in connection with this Bill, alluding to any special circumstances which have taken place since 1886 to justify the transfer of this power from the panchayat to the District Magistrate, I submit that no case whatever has been made out why this power should be taken from them. The only suggestion which appears anywhere is the statement in the Police Committee's report that in some places a tendency has been observed to reduce the number of chaukidars. I say that if this tendency really exists, and if any attempt to do so is hereafter made by panchayats, by all means give the controlling power to the Magistrates. Let them in that case, and in that case only, interfere and put the panchayat right; but it would not do, because in some districts there is a tendency on the part of some panchayats to reduce the number of chaukidars in particular villages, to take away the power from the whole body of the panchayats all over the province.

"I trust, and sincerely trust, that this Council will not do what previous Governments, respecting the feelings of the native community and in accordance with their wishes, refused to do, and that this Council will make the post of panchayat a respectable and responsible one, by giving additional powers to them, and not by taking away powers from them. It is better that there should be no panchayat at all, than that there should be emasculated panchayats all over the province."

The Hon'ble Mr. Cotton said:—"The Hon'ble Babu Gonesh Chunder Chunder has found it necessary, in placing his amendment before you, to travel over the whole principle of the Bill, and I shall be obliged to follow the same

course in my reply; but I will not detain the Council longer than I can help. This amendment has in its germ the most important principle—the fundamental principle—of local self-government. According to my hon'ble friend, we should extend the principle of local self-government to panchayats of villages, and entrust them with the control of the police. That is a doctrine which I entirely traverse, and I shall state briefly my reasons for doing so. I have been charged, lavishly charged, in the public press with being the enemy of local self-government, because of the attitude I have taken up with regard to this Bill. Now I think that if any man in Calcutta, or I may even say in Bengal, may claim to have identified himself with the furtherance of the cause of local self-government in this province, not only in his writings, but in his public actions, it is myself; and therefore I may claim to be an authority as to the principles under which local self-government should be extended. The first and most radical principle involved is to extend this precious boon of local self-government gradually and cautiously, not broadcast and indiscriminately; but when you do extend it, do it ungrudgingly and with confidence. When the municipal and local self-government Acts were introduced into this province, I pointed out at the time, in my capacity as the Commissioner of a Division, that a serious mistake was being made by the Government in extending the provisions of those Acts promiscuously and indiscriminately throughout the province. I said that if the provisions of these Acts are to succeed, if they are to reflect credit on the framers of the Acts and on the people of the province generally, great care and caution should be exercised in limiting their application in the first instance. I said, introduce these Acts gradually and cautiously, but impose as few restrictions as you can. If you find they succeed with the exercise of such caution, then apply them more generally; but be careful in the first instance. I was not alone in the advice I gave to the Government at that time, but our advice was not followed; and, as you are aware, it has now devolved on my hon'ble friend opposite (Mr. Risley) to introduce a Bill which has been denounced as a retrograde measure in several respects, because more care and caution were not taken in introducing the law relating to municipal administration in the first instance. If these remarks apply to Municipalities and to the working of local boards, how infinitely more applicable are they when we come to discuss the extension of local self-government to rural tracts and villages. Now, I am far from asserting that local self-government may

not be extended to villages in this province. I believe that some steps might judiciously have been taken in this direction. I believe that the Unions contemplated under the local self-government Act might have been established and organised with a view to the exercise of particular functions; but those functions are functions of a purely local character. If you extend the principle of local self-government to a village or group of villages, it must be limited in its application to questions in which alone that village or group of villages is interested: that is to say, such objects as sanitation, keeping tanks clean, the provision of good drinking water, it may be the drainage of a portion of the village, the clearing of jungle, and the like. It occurs to me that the improvement of water-supply is one of the first things which may properly and rightly be entrusted to village Unions. Again, there is the question of village communications. What can more aptly be made over to local bodies in the mufassal than the control over their village roads? What more naturally than the control over schools, primary schools, the village patshalas? But if there is one department more than another which you cannot safely entrust to rural administration, it is the police. In no respect is the administration of the police a function which the Government can decentralize or make over to local bodies, and I will tell you why. It is not a matter of indifference to the whole of the community whether any particular village becomes a nest of robbers or a focus of disturbance. The community generally is not much affected if the water in a particular village is foul, if the village schools are not properly attended to, if the roads are out of repair. But the whole community is interested if the police administration of the village becomes a scandal, if dacoits can settle there without prevention, if a gang of thieves or criminal tribes are allowed to locate themselves there. For the same reason as the administration of jails is kept in the hands of the superior authorities, for the same reason as the administration of justice is retained in the hands of the higher authorities, so the administration of the police in every civilised country in the world is reserved to the executive power.

"My hon'ble friend referred to the practice now prevailing in England. Correctly he pointed out that the old village watch in England, a body of men organised on somewhat the same principle as our village chaukidars, has been abolished, and their place has now been taken by the County Police which is controlled by the County Council, the executive authority represented by the District Magistrate in this country. [Babu Gonesh Chunder Chunder.—'But they are elected.'] England has reached its present position after centuries

of toil, disturbance, and strife. Our system has not sprung up like Minerva from the head of Jove. It has been obtained after the toil of centuries. Those who think that a similar organisation can be created by this Council, or by any other Legislative Council in India, are greatly mistaken. Generations must pass away before the system which prevails in India can be modelled on that in England, before institutions organised on that model are able to work up to the English standard. The County Council is the executive body in England, which corresponds to the District Magistrate here. The positions are not wholly analogous, because the circumstances of the country are so widely different. But we do not in England entrust the police of the village to the villagers; they are entrusted to the control of the principal executive body of the county. And Bengal, I say, is the only province in India where an attempt has been made to develop this vicious tendency of local self-government, that is to say, to entrust the control of the village police to a village body. As you have been told in an earlier speech made to-day, the old Regulations placed the village chaukidar under the orders of the police daroga.

"My hon'ble friend gave a history of the village police in the earlier times in this country, a history which, I may be permitted to say, bristles with inaccuracies. I do not think it worth while to detain the Council by stating at length what the history of the village chaukidar is, but I may be permitted to say that in early times, towards the close of the last century, at the time when the Permanent Settlement was passed, we find the whole village watch placed in the hands of the zamindars. It was one of the agencies by which the zamindar exercised his authority; he was the supreme executive authority, not only in matters of revenue, but of police, and he employed his servants indiscriminately for the maintenance of order and for the collection of the public dues. Under the Permanent Settlement the zamindar was relieved of his police responsibility, and the position of the village watchman remained in a very indeterminate and undefined condition, and that indeterminate and undefined condition survives in all parts of Bengal in which *chakaran* rights, as they are called, still remain. The position of the village chaukidar was very uncertain: he was partly under the orders and control of the zamindar, and partly under the Police daroga. The issue has been frequently disputed, and it has gone up to the highest tribunal, and the state of things is still practically as unsatisfactory as it has been during the whole time. These remarks are applicable to that portion of Bengal in which chaukidars are maintained by service

tenures, but over the whole of Eastern Bengal the village chaukidar is, as we now find him, a creature entirely of our own creation. Early in this century he had no existence. Indeed, reports from the Magistrates of Chittagong, Rajshahi, &c, show that they did not find chaukidars existing in any village; there was disorder prevailing, and they created an organisation of village chaukidars to assist the regular police. And indeed Regulation XX of 1817 was passed primarily to vindicate the action which the District Magistrates of their own authority, but with the approval of the Government, had taken. There were no police panchayats then. Panchayats have indeed always existed in this country, and I have a right to complain if it was ever supposed that I said that the institution of the panchayat was the creation of the British Government. For social and caste purposes the panchayat is an institution which has existed from time immemorial, but for purposes of executive and administrative details the panchayat is the creation of the British Government. As far as I am aware, the first mention of the panchayat in legislation will be found in the well-known Act XX of 1856, which organised the chaukidars, as they are called in that Act, in towns and bazars, places other than agricultural villages, and the functions of the panchayat under that Act are simply and solely to assess and collect the tax. Under that Act the Magistrate determines the number and the wages of the chaukidars; he constitutes and appoints the panchayat. There was no elective principle in those days. The chaukidar was appointed by the Magistrate, and the duties of the panchayat were simply the assessment of the tax, the collection of it, and the payment of the chaukidars. That Act is still in force over a very considerable portion of India, although in Bengal it has no longer any validity.

"The next mention we have of the panchayat is in the Bengal Act VI of 1870, and there for the first time the panchayats are created by the British Government for executive purposes in the mufassal. That Act has now been in force more than twenty years, and it has been introduced in the course of that time into about one-half of Bengal. Is it a fact that in those districts in Bengal in which that Act has been introduced, and in which panchayats have worked, the chaukidari system has been more successful than it has been elsewhere? I am not aware that the experience of any member of this Council will be able to answer that question in the affirmative. On the contrary, as far as the control of the chaukidar is concerned, as far as all police work is concerned, panchayats practically have no existence. They have done no good whatever; they have

been of no use. But they have done one thing. There is no doubt that they have assessed and collected the chaukidari rate, and have paid the chaukidars within the villages where they exist. There is no doubt that the chaukidars, where there is a panchayat, are better paid than in other parts of Bengal, where panchayats have not yet been legalised. That is true. As regards any other respect, police work proper, executive control, the panchayat has been useless, and that is the opinion of everyone, with the one exception of Mr. Westmacott, who has enquired into the matter. In the very section of the Police Committee's Report from which my hon'ble friend quoted just now, I find it stated: 'It will thus be seen that, though the law contemplates that the determination of the number of chaukidars shall be left to the panchayat, it has everywhere been found necessary, in the interest of the public, for the Magistrate to interfere to secure the proper performance of this duty by the panchayat.' If it is the deliberate verdict of the Police Committee that the panchayats have nowhere done their duty except when compelled to do it by the interference of the Magistrate, how can any member of this Council say that the institution of the panchayat for such purposes, namely, fixing the number and the salary of the chaukidar, has been a success? It is because it has been such a flagrant failure that the Committee was appointed by the Government, on whose recommendations radical modifications in the law, which the Local Government has more than once attempted to carry, but I regret to say have abandoned owing to a storm of prejudice and ignorance, are now proposed as being thoroughly necessary.

"I stated that Bengal is the only province in India where any attempt has been made to municipalise the village police. I will tell you briefly the practice which prevails in other provinces. In Bombay, under the Village Police Act VIII of 1867, the administration of the village police throughout the district is placed, subject to the control and direction of the Commissioner of Police, under the Magistrate of the district, who is authorised to delegate his powers to any Magistrate who is subordinate to him. That is the practice in Bombay. The village patel, who works directly under the District Magistrate, is the executive authority both for revenue and criminal purposes. He exercises both functions. There is no panchayat or anything approaching to a panchayat. In the North-West Provinces proper, to which the Act XVI of 1873 applies (that does not include Oudh), the chaukidar is nominated by the zamindar, but is appointed by the Magistrate. There is no panchayat. The Local

Government makes rules for regulating the number of chaukidars. In Madras the Police Act XXIV of 1855 applies alike to the general and the village police. There is no separate organisation of the village watch. The general Police Act is as applicable to the regular policemen as to village policemen; both the regular and village police are equally and alike placed under the authority of the District Superintendent of Police under the District Magistrate. There are panchayats in the Madras Presidency, but not for the exercise of police functions. Panchayats have been created by law to exercise certain judicial functions in villages. The law empowers the panchayats to dispose of petty civil suits. That is the only panchayat which the law recognises in Madras. In Burma the Deputy Commissioner has power under Act II of 1880 to appoint and remove the rural police. There is no panchayat. In the Punjab there is no special Act; no Act relating to the rural police, but by law the Local Government is authorised to establish a system of village watch, and to make rules for its organisation. The Council will see, therefore, that in other provinces in India it has not been thought advisable to follow the unwise step taken by Bengal in the Act of 1870, to entrust village police functions in rural villages to the hands of the villagers.

"But I will admit that there is one weak point in the Bill I have had the honour to introduce. It is true, as my hon'ble friend has pointed out, that the principal functions of the panchayat, as they will be if this Bill is passed, will consist in the assessment and collection of the chaukidari rate. He says: Why maintain the panchayat at all if you are not going to entrust them with other functions than these; why impose on the people such invidious duties with no compensation? I do admit that that is unquestionably a weak point in the Bill, and the Government was placed in a difficulty when this point came under its consideration. But the rates from which the chaukidars are to be paid has to be collected from one source or another. If this Act were introduced into all villages in Bengal, the total of the chaukidari rate to be collected would amount to a sum of not less than 60 lakhs of rupees. The Act has, however, been extended to only a portion of Bengal, and in that portion the rate amounts to about 30 or 40 lakhs. In any case, however, this is a large sum of money which must be realised by some means, and the Government has considered how it can best be realised. Shall we continue the practice existing of collecting the rate, or shall we devise any other means? We considered what is done in other provinces. Now, what is done in the North-West Provinces? There the

chaukidars are paid out of a rate which is levied on the zamindars for the purpose of paying for local objects—for communications, for dispensaries and many other purposes—and the law expressly says the village police are to be paid from it. A sum equivalent to 10 per cent. on the land revenue paid by the zamindar is the rate levied for such purposes in temporarily-settled districts, and that constitutes the source from which the chaukidar is paid. In Burma a 10 per cent. rate is levied in the same way, and a portion of it is devoted to the payment of the village police. In Madras the village police are paid on a similar principle. There a cess is levied of one anna on the rupee of the revenue paid, and that amount is applied to the remuneration of the village servants employed both in revenue and police duties. Well, that is the alternative which presented itself to this Government. We might impose the additional cess which exists in other provinces and is imposed on the land. Indeed, a similar proposal was actually made in 1851, and was introduced into the Council of the Government of India, but in consequence of the storm of opposition which was raised by the zamindars of the province, the Bill was withdrawn. Now the Government is of opinion that that method is open to grave objection, and we thought it very unlikely that the members of this Council would be willing to agree to the principle that the whole of the expenditure, needed for the payment of chaukidars should be borne by the landed interest. At present the chaukidari rate is borne by all classes of the community within the village and apportioned upon the residents with reference to their position and their comparative wealth; each man, except the very poor, pays a small quota; every house pays something. Well, we thought it better that the tax should be continued to be realised in that way, than that the people at large should be relieved from this payment, and that the whole burden should be borne by the landed interest.

"Then came the question, why should the local panchayat collect this cess? Why should there not be a special officer appointed for the purpose? Why should there not be a tahsildar who should collect the cess in the way the panchayat now does? Well, we considered that alternative, but rejected it on the ground that it would let loose an army of about fifty thousand tahsildars for the purpose of collecting the rate, who would prove a source of oppression which the Government shrank from contemplating; and I have no doubt that if we had made such a proposal we should have been opposed by every member of this Council. All taxation is an evil, and we have before us a choice of evils,

and it appeared to us that the present method under which the tax is collected is the best, namely, by members of the village who know the condition of the villagers, who would be less likely than any one else to oppress them, and whose interest it would be to secure the good treatment of the chaukidars. This would be more acceptable than any other form of taxation, or any other mode of realising it. I saw it actually stated in the *Amrita Bazar Patrika* that the chaukidari tax is more cruel in its operation than any tax in existence in the world. I can only say that this is an instance of remarkable exaggeration. All taxation is, I won't say cruel, but an evil in itself, but I believe there is no tax which operates less harshly upon the people than this chaukidari tax, assessed and realised as it is by the panchayats. I think it is quite possible that there are members of the Council now present who have resided many years in Bengal, and who, until the question of this Bill came before them for discussion, had never even heard of the existence of such a tax, a tax which works as smoothly and evenly as possible. Of all direct taxes levied in India, it is, in my judgment, the easiest and least open to objection, and that is why the Government, in considering this question, thought it wise and proper to leave the assessment and collection of this tax in the hands of the panchayat.

"But we do leave the panchayat some powers besides the power of assessment and collection. The power of nomination of the chaukidar is left in the hands of the panchayat, and for a very good reason, that we wish to maintain the local knowledge of the chaukidar in the village in which he is appointed. If the power of nomination is given to an outsider, there is the risk that some one not residing in the village may be appointed. This, therefore, is a very material power left in the hands of the panchayat. There is also a further section of the Bill which provides that a chaukidar shall obey the orders of the panchayat in regard to keeping watch within his village, and other matters connected with his duties as chaukidar. We do not emasculate the panchayat altogether; we leave him considerable powers, to be exercised in the village, which are not likely to be injurious to the administration. But such powers as fixing the number of the chaukidars, fixing their salary, and the power of substantive appointment, are matters which the Government are of opinion should be left to the executive authorities.

"One point more only before I sit down, and that is with regard to the number of the chaukidars. I quite agree with my hon'ble friend that it is very important that the number should not be too large, and it is in order to impose

a check, as it is feared that some Magistrates might be disposed to appoint too large a number, that it has been provided that, without the sanction of the Commissioner of the Division, there shall not be more than one chaukidar for every 60 houses. But, as a matter of fact, the number of chaukidars in Bengal has, I believe, not materially increased owing to the interference of the Magistrate. The number is, I think, very excessive; but I do not think the tendency of the Magistrates has been to increase it. I will state the result of my enquiries as to the numbers at different times. I find it stated by Mr. Sherishtadar Grant that at the time of the Permanent Settlement there were 150,000 village chaukidars; Sir F. Halliday in 1838, after a full enquiry, gave the number at 170,000; in 1866, Mr. McNeile, after special enquiries, found the number to be 190,000; the Police Committee fixed it at 168,000, and now in the report of the Inspector-General of Police for the past year the number is put down at 171,000. These figures do not show that the Magistrates have unduly exercised their powers by making the chaukidars so numerous as to be a burden upon the people. I believe that Magistrates generally have no such wish or desire, although it is possible that in some instances they have improperly increased the number. It is to check such a tendency that we fixed a limit. My own belief is that in many districts of Bengal there are twice the number of chaukidars that are desirable for good administration, and that in every district nearly the number can be reduced."

The HON'BLE DR. MAHENDRA LAL SIRCAR said:—"I am afraid we are making a mountain of a mole-hill in this matter of the powers of the panchayat. The functions which the amendments standing in the name of the Hon'ble Gonesh Chunder Chunder propose should be discharged by the panchayat, are not only of the simplest character, but are precisely those which, as I gather from what fell from the Hon'ble Mr. Cotton, the panchayats from their local knowledge are most competent to discharge. The panchayats have hitherto, under the Act we are going to amend, been enjoying the power of appointing and dismissing chaukidars, determining their number and fixing their salaries; but the majority of the Select Committee have thought fit to take away those powers, and the only reason for doing so which I could gather from the speech of the Hon'ble Mr. Cotton, was that those powers had been abused and would be abused. Well I cannot deny that such powers have sometimes been abused, nor can I guarantee that they will not be abused in the future. But I would

ask what powers, what rights, what privileges have not been abused by men of larger calibre than simple illiterate villagers? Is the simple fact of abuse of power any excuse for its abolition when its use is likely to be attended with beneficial results? The endeavour of the Legislature, in my humble opinion, should be to provide against the recurrence of such abuses, and in the present case ample provision has been made in this direction. You have circumscribed these powers in every possible way; you have fixed the minimum number of chaukidars and their minimum pay, and at every step the panchayat will be under the control of the Magistrate. If this will not minimise the chances of abuse, I do not know what can.

"Under these circumstances I do not see that any serious harm can result from the panchayat being vested with the powers which they now enjoy. Without these powers they will be reduced to a mere nonentity and an absolute farce. Deprived of the dignity which these powers confer, the office of panchayat will cease to be attractive; and you will find that all respectable villagers will avoid, as they are now doing, to be elected to the panchayat. And then, Sir, it would be better far that the panchayat should be saved from all trouble, and that the panchayat system should be abolished altogether. With these words I heartily support the amendment."

The Hon'ble Mr. Woodroffe said:—"With the last speaker I will venture to recall the Council to the matter of the amendment before us. The hon'ble member in charge of the Bill has travelled over a series of matters with which, at the present moment, the Council is in no sort of way concerned. There is no question before it of imposing any tax on the land or substituting any other mode of collection than that adopted in the Act which is being amended, except by the instrumentality of the panchayat. There is no question before the Council as to whether it is or is not desirable that a tahsildar should be appointed in the place of the panchayat. There is no question whether or no such powers as the zamindars and landholders throughout the country possess still should be further docked; whether the chaukidari tax should be taken as being the most cruel of all impositions, nor whether it is or is not collected with greater ease than any other tax necessary to be imposed on the country for its due administration. Neither is there any question now before the Council, as I understand it, with respect to the principle of local self government.

[*Mr. Woodroffe.*]

"The hon'ble member has given the Council, if he will pardon me for saying so, a *rechauffé* of his speech on the former occasion when he was combatting the position that the panchayat should be allowed to select whom they would appoint to be the panchayat of the village or group of villages. The simple question before the Council is whether the panchayat are to have, subject to the control of the District Magistrate, power to determine the number of the chaukidars to be appointed, and in that respect I am bound to say that my view accords with that of the hon'ble mover of the amendment and that of the other hon'ble member (Mr. Risley), who has put his name to a dissent from the recommendations of the Select Committee. What do we want to do? I take it that the real object which the Council has in view is to get as good men on the panchayat as is possible, and to have as much economy as is possible in the supervision of their actions, and as little friction as possible in respect of their actions.

"Now how is that end to be attained? If you have men appointed, whether by the Magistrate himself or by the villagers through such selection as may be had, to be members of the panchayat, does any one reasonably think that he will find good men to act if these men are to have no other functions than that of assessing and collecting the tax? Are they to have no voice whatever in determining the number of persons whose pay they are to raise, and for the purpose of obtaining that pay they are to assess their co-villagers? With the Commissioner of Bhagalpur I agree that the attempt to improve the panchayat and gradually form them into a useful body should not be abandoned, and with him I concur and think that no improvements are to be expected if they are to be deprived of all authority. They must have some authority; otherwise you will not get fit persons to perform onerous and, in some sense, invidious and certainly gratuitous duties. To expect otherwise will be to expect a revolution in human nature itself.

"It is clear they ought to have some voice in the matter, and the minute of the Commissioner of Rajshahi, already referred to, puts this positions as it seems to me, strongly when he says under date the 30th June, 1892:—'You are aware that all District Magistrates would, if permitted, increase the number of the regular police and the pay of the head-constables, but their laudable desire to do this has not hitherto been gratified because its indulgence would impose a burden on the Provincial exchequer. Government cannot allow District Magistrates to be the best judges as to the expense to be incurred on the police, and

must find some difficulty in distinguishing between this case and that of the chaukidars; for it will scarcely be maintained that the incidence of the cost on a special tax not on the general funds at the disposal of the Lieutenant-Governor makes any essential difference. The tax-payers need protection quite as much as the Local Government.'

"The hon'ble member in charge of the Bill has combatted the amendment by stating a number of things relating to Madras, Bombay, the North-Western Provinces and the Punjab. With curious inconsistency he told us there was no distinction between the village police and the ordinary police in Madras, and yet they were at the same time dealt with by the same authority. I suppose he meant that the police were simply subject to their own authorities. But he has pointed out further that the examples which he cited were really nothing to the point, because he admits, to use his own language, that no other province has taken the step which has been taken in Bengal in recognising, if not establishing, the panchayat in their relations to the village police. Therefore we must naturally expect that what prevails in these places will not be in accordance with the system which prevails in Bengal. So far as I can follow the hon'ble mover of the amendment, he showed, and it is admitted by the Hon'ble Mr. Cotton that he did show, that although the attempts which are now being made in this Bill have been made on former occasions, they have not been accepted by the Executive Government yielding (as the Hon'ble Mr. Cotton said) to the storm of prejudice and ignorance. Whose prejudice and ignorance? Of the villagers, or of the officers entrusted with the administration of justice throughout the country? As regards the latter, owing it is said to their multifarious duties, it is admitted that they have not been able to carry into operation the provisions of Act I of 1886, and so far therefore it may be said that they are very much dependent for their information upon the police and their subordinates, and that might excuse a certain amount of ignorance on their part. But I don't think it was their ignorance to which the hon'ble member referred. And as regards the people of the country, I have before me reports from various bodies, and so far as regards the larger Associations of persons who ought not to be ignorant of the condition of the country in which they live, they are one and all in favour of the amendment of the hon'ble Babu Gonesh Chunder Chunder. The Murshidabad Association is not prepared to recommend taking away from panchayats the power of determining the number of chaukidars in villages. Another Association from Barisál

says the same thing in somewhat different words. They said:—'The determination of the number of chaukidars to be appointed in a village and their salaries should naturally rest with those who are to improve the assessment. The panchayat will have the advantage of their local knowledge in the exercise of those powers, while the Magistrates, having no local knowledge, will not be in a position to know the area of the village, whether the houses are scattered or close together, and the number of chaukidars necessary to keep watch and go their rounds regularly.'

"From Eastern Bengal comes the following expression of opinion—'The Committee consider that to make the panchayat system a success and attractive to good people more power should be entrusted in their hands than at present. To this end the power of appointing and dismissing chaukidars should be left in their hands.' From Rajshahi I find the same thing—'The panchayat is expected to know the local requirements, and under the existing law it has the power to determine the number of chaukidars in its village. We do not see why this power is sought to be transferred to the Magistrate, who can hardly be expected to know the peculiar requirements of any village in the district'; and similarly from other Associations, I think some five or six others, whose opinions I will not weary the Council with reading, because the quotations I have given will, I think, suffice. The same opinion is expressed by the British Indian Association, the Bhagalpur Landholders' Association, and some rate-payers in meeting from Santipur.

"After all, what is the amendment? It is in effect, that which, despite the hon'ble member in charge of the Bill, has been approved by the Committee whose report led to the drafting of this Bill. It is true that in page 19 (paragraph 40), the Committee say—'Under all the circumstances of the case it seems to us that it would be better not to fix any limit by law, but to leave the number of chaukidars to be employed and the area in charge of each to the discretion of the local officers.' That was with reference to the suggested hard-and-fast limit of 60 houses, which in some places might not be feasible. But when they come to record their final recommendations they say in the paragraph at page 22 commencing with 'it will thus be seen that, though the law contemplates that the determination of the number of chaukidars shall be left to the panchayat, it has everywhere been found necessary in the interest of the public for the Magistrate to interfere to secure the proper performance of this duty by the panchayats. Such interference, though not strictly warranted

[*Mr. Woodroffe; Maharajah Sir Harendra Kishore Sing Bahadur; Mr. Allen.*]

by the law, may be brought within the scope of section 62, and is justified by the necessities of the case. In any new law that may be passed it should, we think, be expressly legalised. In other words, the panchayat should exercise the power conferred on it by section 11 of Act VI of fixing the number of chaukidars subject to the 'confirmation of the Magistrate.' And now it is proposed to free the panchayat from the duty in this respect imposed on it because it was found that in some instances this duty was not faithfully carried out. To remove altogether that duty seems to me a very strange step to take. Rather let us meet the evil by applying an appropriate remedy. The appropriate remedy, unless the panchayat be altogether removed, is in a matter of this kind to subject them to the control of the Magistrate. If you do that you will, I venture to think, attain the object we all have in view, namely, that we should get men who will discharge these onerous and often invidious duties with greater care by allowing them to have a voice in the determination of the number of the chaukidars required for the village. But we should guard against the possibility of any abuse of the power by subjecting them to the control of the Magistrate, and that I understand is the meaning of the amendment before the Council. It seems to me that an attempt should be made to put the panchayat system on a proper footing, so as to see whether it can be worked in such a manner as we expect from it under the provisions of Act VI of 1870. We ought to do everything in our power to secure the co-operation of the best men who can be found for the purpose. Local self-government is not the question we have to consider, but what measures ought to be taken so as to secure the best men for carrying out the provision of this Act subject to the control of the Magistrate."

The Hon'ble Maharajah Sir Harendra Kishore Singh Bahadur said:—"I am not in favour of this amendment because I think that the panchayat should nominate the persons to be chaukidars, but I would leave the numbers to be determined by the Magistrate, who should also appoint them."

The Hon'ble Mr. Allen said:—"The Advocate-General has proposed to bring the Council back to the actual question before it on the words of the amendment, but it appears to me that he himself has taken as wide and devious a flight into the clouds as any of the preceding speakers. The only question involved in the amendment is as to whether the number of chaukidars to be appointed should be determined by the panchayat subject to the limitations

laid down in the provisos to the amendment, which practically tie them hands and feet, leaving them little or no discretion. They must appoint one chaukidar and for 60 houses; they must appoint two for 150 houses; they have a discretion then of appointing more than one for any number of houses between 60 and 150. It is not difficult to know how that discretion will be exercised. When the number of 150 is passed, they must appoint an additional chaukidar for every 100 houses. The actual discretion left to them is almost nothing; and the question whether this truly trifling 'privilege,' as it is called, is likely to have such a wondrous effect in procuring capable and eminent men to be members of the panchayat, that if withheld, capable men will keep back in disgust, may be doubted. There is only one consideration which should weigh with us. It is not what the panchayat would like, but what is for the good of the village. How is the village protection to be secured with the minimum of expenditure, the minimum of friction and the maximum of certainty. That is the only question which the Council has to consider, and all the eloquence which has been expended to-day upon the trivial matter raised in the amendment appears to me entirely out of place."

The HON'BLE MR. LAMBERT said:—"The principle involved in this amendment appears so important that I should like to say a few words. Act VI of 1870 was framed in a spirit of trust in the village community, and panchayats were established in the hope that they would co-operate with the regular police, and would exert themselves to render the rural police more efficient. The experience gained since 1870 shows that the results expected have not been realized; that whatever good has resulted from the introduction of the Act of 1870 has been brought about solely by official vigour and interference; that the panchayats have been apathetic or have misused their influence. For twenty years panchayats have been on their trial, and the result has been failure. On these grounds I am averse to entrusting to them any powers whatever connected with the organization of the village police, either as regards fixing their numbers, or appointing them, or fixing their pay. Past experience shows that the chaukidar must be made independent of the influence of panchayats in the discharge of his public duties. It may be objected, why then retain the office of panchayat at all? I reply that panchayats can still perform most important duties,—duties which are absolutely necessary for the maintenance of the system of village police, if it is to be maintained at all. For the payment of chaukidars under this Act about thirty-five lakhs of rupees are required annually,

and it is of the utmost importance that this money should be raised by some agency which is not distasteful or harassing to the village communities. Therefore, the panchayats will still remain the machinery for assessing the village, and for collecting and disbursing the chaukidar's pay. Further, they will exercise control over the chaukidar so far as he is the village servant. With these powers let them be content, and let the general control of chaukidars be vested in the authorities responsible for the efficiency of the administration. If this is done, there seems to be no reason why the present system of rural police should not be fairly efficient. But if efficiency is to be sacrificed in order that powers may still be bestowed on the panchayat for which, after twenty years' trial, they have shown themselves unfitted, are there not grounds for fearing that the incompetency of the panchayat may lead before long to the abrogation of the entire system of the village watch? When the Committee of 1890 was appointed, 'it was clear,' so runs the introduction to the report, 'that at least ninety per cent. of the most dangerous offences against property remained undetected.' It is not likely that this state of things will be allowed to continue. Therefore, if the people value their old institution, it is their plain interest to see that no considerations retard the reform of the village police. It has been said over and over again that the efficiency of the regular police depends largely on the efficiency and co-operation of the village police. Panchayats can no longer be thought of as a means to this end. The system has had a long trial, and however competent panchayats may be to settle their own domestic affairs, they have shown themselves unfitted to be entrusted with powers in public matters, which affect the well-being of the community at large. I trust that in coming to a decision on this matter the Council will never lose sight of the aim of this Bill, which is, not to pass any opinion on the panchayat system generally, as it is in this country, but to improve the system of rural police."

The Hon'ble Mr. Risley said:—"In speaking with reference to the principle involved in this amendment, the hon'ble member in charge of the Bill referred to the experience of other parts of India, and remarked that it pointed all in one direction, and suggested one conclusion. In order to complete the reference and at the same time to cast some doubt on the inference which the hon'ble member sought to draw from it, I may perhaps be permitted to quote what appears to be the most recent record of such experience, as may be seen from a

report in to-day's *Pioneer* of the proceedings of the Supreme Legislative Council on the Bill introduced by Sir Charles Crosthwaite to provide for the administration of the police in Upper Burma."

[The HON'BLE MR. COTTON rose to order. He believed it was not regular to read in this Council the proceedings of any other Legislative Council.]

The HON'BLE THE PRESIDENT said:—"He did not find anything to that effect in the rules, and practically there could be no objection to referring to a report of proceedings which was public property."

The HON'BLE MR. RISLEY said:—"The extract from Sir Charles Crosthwaite's speech which he wished to read was the following:—

'The police administration in Burma, as in other parts of the Indian Empire, and perhaps more than in other parts, offers problems of much difficulty. One of the most difficult is how to get the police force into touch with the people, and to obtain their good will and assistance, without which the task of detecting and repressing crime is very hard. One cause of our difficulties has been that we have neglected the old indigenous institutions of the country, and have endeavoured to work entirely through a police department which has no connection with the people. All over Burma there was, in former times, a police machinery by which villages and portions of towns had their headmen, under whom were minor officials, each entrusted with the supervision of a number of houses, usually ten. Even where this machinery has, from ignorance and neglect, fallen into disuse, people are readily induced to adopt it again, and take to it without difficulty.

'Like most successful Indian administrators he (Mr. Jameson) took counsel of the people of the country, and at their desire the old system was reverted to. The town was divided into wards, and 'myogaulugyis,' which is the Burmese translation of aldermen, were appointed, who undertook to help the police to supervise bad characters and prevent crime. The system has been worked now for nearly ten years without legislative sanction, and, as the Chief Commissioner reports, since that time Rangoon has been remarkably free from crimes of violence, and it is generally believed that the myoganlugyi system has contributed materially to its immunity from disturbance.'

"This statement has come in very opportunely to complete the series of experiences of other provinces, and it lends strong support to the principle affirmed in the amendment which was carried last Saturday, the principle that the people themselves should be led to co-operate with the Government in the working of the rural police."

[*Babu Gonesh Chunder Chunder.*]

The HON'BLE BABU GONESH CHUNDER CHUNDER spoke in reply as follows:—"I do not wish to detain the Council, as the learned Advocate-General has very ably and exhaustively replied to the arguments of the Hon'ble Mr. Cotton, but I will only make one or two remarks with reference to them. I am very glad to find that the Hon'ble Mr. Cotton is willing to consider favourably the application of the principle of local self-government to rural villages, but he is anxious that it should be done cautiously. But by opposing my motion he is doing just the opposite of what his views on this point seem to be, because he is trying to take away from these village people the little power which they possess. He is willing to give villagers power to look after the sanitation and drainage of the village and so forth, but he is not willing to allow the representatives of a village to determine how many chaukidars they want for the purpose of protecting their own lives and property. This, he thinks, is a very large power which they are not fit to use. The hon'ble member would not, therefore, agree to the retention of this power by the panchayat. But after all, what is this power? It has been very correctly described by the Hon'ble Mr. Allen. It is this. Whether this power is exercised by the District authorities or by the panchayat, there cannot be more than one chaukidar for 60 houses. Then, again, the amendment which I propose limits also the minimum number of chaukidars which the panchayat must employ, that is to say, it must not be less than two chaukidars for every 150 houses and one chaukidar for every 100 houses above 150. So that it comes to this, that if this power is allowed to be exercised by panchayats, they will have a discretion to appoint one chaukidar between 75 and 60 houses and nothing more.

"I cannot understand what bearing this question has on the administration of criminal justice in the country. For the purpose of the more efficient administration of criminal justice, it may be necessary to have a far larger number of chaukidars than the Act provides. It may be necessary to have one chaukidar for 20 houses. I can well understand that. But what bearing can that have upon the question whether there should be one chaukidar for 60 houses or one for 75 houses? What bearing the determination of that question can have upon the administration of criminal justice I cannot understand.

"Then the Hon'ble Mr. Cotton referred to Act XX of 1856. Was not that Act before this Council in 1870 and in 1886, and were not all the evils which were complained of by the former Police Commission and by the local

officers before the Council on those occasions? If they were, and if this Council thought that, even under those circumstances, the powers of the panchayat ought not to be taken away, why should we now, upon the same grounds and the same materials—for nothing has been shown to have occurred between 1886 and the present time which would alter the circumstances of the case—take away those powers from the panchayat? The Hon'ble Mr. Lambert has been good enough to say that the system of the panchayat has failed. We all know that it has failed; it was reported before 1859 that it had been a failure; therefore it has been a failure all along, and notwithstanding that this Council in 1886 thought proper to retain those powers. And they must have done so for a very good reason. I think the reason was this, that if the panchayat system is to be retained at all, it is very necessary that some power, beyond the assessment and collection of the rate, should be given to them; otherwise no responsible person would come forward to serve on the panchayat. If the panchayat system is to be kept intact, as this Act seeks to do, I submit that these powers ought not to be taken away from them."

The HON'BLE THE PRESIDENT said:—"I will add as little as possible to the very discursive discussion which has taken place on this amendment, especially so, because I so entirely agree with what fell from two hon'ble members on my right, who pointed out how extremely small is the discretion proposed to be allowed to the panchayat by the amendment.

"With reference to what was recently said in the Supreme Council with regard to the Burma Bill, I have not had an opportunity of reading the whole proceedings myself, but from what I happened to see this morning in a Calcutta paper in which the subject was taken up, I gather that an idea exists that the proposal there made is of a different nature from the sort of legislation with which we are now concerned. This seems to me a mistake. I understand Sir Charles Crosthwaite to have said: 'We have introduced within the last ten years a system of working through the heads of villages as policemen, we find it extremely good, and we are going now to legalise it.' Similarly, we say here: 'We have appointed a strong Police Committee, who have considered the working of the Act, and have found it extremely bad, and we are going to amend it.' As far as I can judge, the lines on which we are proceeding correspond closely to those which are being followed in the Viceroy's Council, since the principle in both cases is to base legislation upon practical experience.

[*The President.*]

"I only wish to add, with regard to the three amendments proposed by the Hon'ble Babu Gonesh Chunder Chunder, and which I will take together since, as he says, they are very much the same in character, that my personal view on the subject inclines me to follow entirely the recommendations of the Committee. The Committee, as you will remember, made three recommendations which are to be found in page 116 of their report. Recommendation No. 3 is the one which my hon'ble friend proposes to replace, and in so far as he proposes to replace what is recommended by the Committee, I am in accord with him. The other two recommendations of the Committee to which I refer are that the panchayat should not have the power of appointing the chaukidar or of fixing his pay, but that the pay should be fixed by the Magistrate, and that the chaukidar should be appointed by him. I trust that the Committee will not dissent from those conclusions on which our Bill is based.

"Before putting the amendment to the vote, I wish to point out that it consists of two parts, only one of which has been the subject of debate; the other has been very slightly touched upon, and perhaps it will be found that it has the assent of the Council. Therefore I shall put the two parts of the amendment separately."

The HON'BLE THE PRESIDENT then put the first clause of the Hon'ble Babu Gonesh Chunder Chunder's amendment, which stood as follows:—

'The panchayat shall, subject to the control of the District Magistrate, determine the number of chaukidars to be employed in a village.'

The amendment was negatived, on the following division:—

Ayes 4.	*Noes* 7.
The Hon'ble Babu Gonesh Chunder Chunder	The Hon'ble Mr. Playfair.
„ „ Dr. Mahendra Lal Sircar.	„ „ Maharajah Sir Harendra Kishore Sing Bahadur.
„ „ Mr. Risley.	„ „ Mr. Wallis.
„ „ „ Woodroffe.	„ „ Shahzada Mahommed Furrokh Shah.
	„ „ Mr. Lambert.
	„ „ „ Cotton.
	„ „ „ Allen.

The HON'BLE THE PRESIDENT put the 2nd clause of the amendment which runs thus:—

'Provided that there shall be at least two chaukidars appointed in every village in which there are 150 houses, and one additional chaukidar for every complete 100 houses beyond such number.'

This amendment was also negatived on the following division:—

Ayes 4.	*Noes* 7.
The Hon'ble Babu Gonesh Chunder Chunder.	The Hon'ble Mr. Playfair.
„ „ Dr. Mahendra Lal Sircar.	„ „ Maharajah Sir Harendra Kishore Sing Bahadur.
„ „ Mr. Risley.	„ „ Mr. Wallis
„ „ „ Woodroffe.	„ „ Shahzada Mahommed Furrokh Shah.
	„ „ Mr. Lambert.
	„ „ „ Cotton.
	„ „ „ Allen.

The HON'BLE BABU GONESH CHUNDER CHUNDER, in moving the next amendment, that in section 5, after the words 'determined by,' the words 'the panchayat subject to the control of,' be inserted, said:—"After the fate of my first amendment I do not think I can hope to be more fortunate with this one. The object of putting into the hands of the Magistrate the power of fixing the pay of the chaukidar is based upon the fact that in some places it was found that the panchayat did not give the chaukidars adequate pay. It seems to me that the panchayat, consisting as they do of men who are every day dealing with local labour, are in a better position to determine what the pay of the chaukidar should be, than the Magistrate, who would have to depend entirely on police reports."

The HON'BLE MR COTTON said:—"As this amendment involves the same principle as that upon which the last amendment was based, and as that principle has been practically decided by the vote which has just been taken, I do not think it necessary to detain the Council with any further remarks."

The amendment was put to the vote and negatived on the following division:—

Ayes 4	*Noes* 7.
The Hon'ble Babu Gonesh Chunder Chunder.	The Hon'ble Mr. Playfair
„ „ Dr. Mahendra Lal Sircar.	„ „ Maharajah Sir Harendra Kishore Sing Bahadur.
„ „ Mr. Risley	„ „ Mr. Wallis.
„ „ „ Woodroffe.	„ „ Shahzada Mahommed Furrokh Shah.
	„ „ Mr. Lambert.
	„ „ „ Cotton.
	„ „ „ Allen.

The Hon'ble Mr. Cotton moved that the following proviso be added to section 7—'Provided that the members of a panchayat appointed under this Act shall not be liable to any assessment.' He said—"I am saved from troubling the Council at any length owing to the remarks I have already made on the subject of the constitution and attributions of the panchayat. I admit that it is undoubtedly a weak point in the Bill that the panchayat is retained to undertake the invidious duties of assessment and collection, and if any better alternative can be suggested, I shall have no objection to strike out the panchayat altogether so far as the administration of the Chaukidari Act is concerned, and to provide for the funds necessary to pay the chaukidars in some other way. No other scheme has, however, been put forward in this debate, and I believe that the existing procedure is open to less objection than any other that can be devised. But it is well to recognise that these functions of assessment and collection are invidious and unwelcome to the headmen of the village community on whom they are imposed, and that it is expedient therefore to afford any recognition of the services of the panchayat that may render their position more endurable than it would be if there was nothing but this invidious duty to perform. It is not easy to suggest any means of reconciling the panchayat to their duties beyond a vague recognition of their services, and in order to induce them to accept the appointment with greater willingness, it has, after consideration, been thought expedient to declare by law that they should themselves be exempted from assessment. This has been proposed by two or three district officers, and though not free from objection in itself, yet it is a fair and reasonable suggestion. If there is any means of rendering the office of panchayat a more acceptable one, the Government will be glad to consider it. It is a very important point to which the Government has given its attention, and as no other means seemed to fall within the purview of legislation, this one is proposed, and I hope the Council will not see any objection to it."

The Hon'ble Dr. Mahendra Lal Sircar said:—"I am always most reluctant to oppose anything that proceeds from the Hon'ble Mr. Cotton. But in the present, as in all the previous intances, I am compelled to do so out of a sense of duty. I am convinced that if this amendment, which gives to the panchayat exemption from assessment, is carried, it would have a very seriously injurious effect upon the *personnel* of the panchayat. The exemption would act as a sort of bribe to induce men to belong to the panchayat, and to a dead certainty the worst and not the best men would succeed. To compare great thing with

small, I would quote the high authority of John Stuart Mill, whom my hon'ble friend is so fond of quoting, on the effect that would inevitably result if Members of Parliament were remunerated. 'It will amount,' says he, 'to offering 658 prizes for the most successful flatterer, the most adroit misleader of his countrymen. As Mr. Lorimer remarks, by creating a pecuniary inducement to persons of the lowest class to devote themselves to public affairs, the calling of the demagogue would be formally inaugurated. Nothing more ought to be deprecated than making it the private interest of a number of persons to urge the form of Government in the direction of its natural perversion. The indications which either a multitude or an individual can give, when merely left to their own weaknesses, afford but a faint idea of what those weaknesses would become when played upon by a thousand flatterers.' If this is likely to happen in the most advanced of civilized countries, can we expect anything better in the villages of Bengal? It is, therefore, because of the obvious and inevitable demoralizing influence which exemption of the panchayat from taxation would exercise upon their selection that I am compelled to oppose this amendment."

The HON'BLE MR. WOODROFFE said:—"I do not look upon this as an attempt to bribe, but the objection might be put in this way—that it suggests to the proviso a conflict between interest and duty on the part of the members of the panchayat."

The HON'BLE MR. WALLIS said:—"I regret I cannot see my way to support the amendment, for section XV provides that in no case can the amount to be assessed on any one person be in excess of Re. 1 per mensem; it would therefore not be adding to the dignity of the office to offer to exempt members of the panchayat from an annual payment of Rs. 12."

The amendment was put to the vote and negatived on the following division:—

Ayes 4.	*Noes* 7.
The Hon'ble Mr. Playfair.	The Hon'ble Babu Gonesh Chunder Chunder.
„ „ Maharajah Sir Harendra Kishore Sing Bahadur.	„ „ Mr. Wallis.
„ „ Mr. Risley.	„ „ Shahzada Mahommed Furrokh Shah.
„ „ „ Cotton.	„ „ Dr. Mahendra Lal Sircar.
	„ „ Mr. Lambert.
	„ „ „ Allen.
	„ „ „ Woodroffe.

[*Babu Gonesh Chunder Chunder; Mr. Cotton; the President*]

The HON'BLE BABU GONESH CHUNDER CHUNDER moved that for section 8, the following be substituted:—

'(*1*) The panchayat shall appoint chaukidars under this Act, subject to the approval of the Magistrate.

'Provided that if the panchayat fail to appoint chaukidars within a reasonable time, or the Magistrate does not, for reasons to be recorded by him in writing, approve of the chaukidars or any of them so appointed, the Magistrate shall appoint such residents or resident as he thinks fit to be the chaukidars or chaukidar.

'(*2*) The District Magistrate, or the panchayat, with the sanction of the District Magistrate, may from time to time dismiss any chaukidar so appointed.'

He said:—"I think this amendment will share the same fate as the preceding one which I have moved, but still I shall state what I have to say on the point. I would like to point out that when Act I of 1886 was under the consideration of the Council, the proposals contained in the present Bill were brought forward by Mr. Garrett, now District Judge of the 24-Parganas. He proposed that village watchmen should be nominated by panchayats, but should be appointed by the Magistrate of the district; but his proposal was negatived. Besides that, there is this objection, that if you pass this Bill as it has been amended by the Select Committee, you will have to repeal section 36 of Act VI of 1870."

The HON'BLE MR. COTTON said:—"Section 9 of this Bill does repeal section 36 of Act VI of 1870. It was thought that it would materially raise the status of the village watchman if he derived his appointment directly from the Magistrate. A good deal depends on form in such matters. One of the great defects in the constitution of the village watchmen is that they are drawn from the lowest classes—the dregs of society. In most mufassal localities low class men are associated with the village watch, and it has always been the effort of the Government to try and improve this state of things. The present is one of those efforts which I trust will be more successful than its predecessors, and it is hoped it will lead to the appointment of a superior class of men. The principal reason why the power of nomination is left to the panchayat is that local men may be appointed. It is no doubt very important to retain the local knowledge of the village watchman and to see that an outsider is not ordinarily appointed."

The HON'BLE THE PRESIDENT said:—"I have already said a few words on the subject of this amendment. I look upon this power as a matter of great importance, and that it will enable us to do away with a serious evil, which this

amendment would perpetuate. It is well known to all that the Bengal chaukidar is at present in almost all cases a member of the lowest caste. When I was a district officer in the North-Western Provinces it was the same; the chaukidar was either a Dhanuk or a Pasi or a Bauria or a Barwar, or of some other of the very lowest and most criminal classes. It is just about twenty years ago that an Act was passed by which the chaukidars in the North-Western Provinces were paid for by a local rate and were brought under the discipline of the Magistrate. The Police Committee appointed in 1890 in the North-Western Provinces referred to the great advance which has been made there by substituting people of higher castes, Rajputs and Muhammadans, instead of those lowest class men. I do not at this moment recollect the exact figures they gave; but I remember that last year's Police Report showed that out of 6,000 vacancies which took place within the year, only about 1,000 were filled up by members of the lower classes, such as were formerly appointed, and the remaining 5,000 by men belonging to the higher classes. I trust that, when the power of appointment is vested in the Magistrate, as it will be under this Bill, it will help to attain the same result, which I am sure you will all agree with me is most desirable."

The HON'BLE BABU GONESH CHUNDER CHUNDER's amendment was put and negatived on the following division:—

Ayes 2.	*Noes* 9.
The Hon'ble Babu Gonesh Chunder Chunder.	The Hon'ble Mr. Playfair.
„ „ Dr. Mahendra Lal Sircar.	„ „ Maharaja Sir Harendra Kishore Sing Bahadur
	„ „ Mr. Wallis.
	„ „ Shahzada Mahommed Furrokh Shah.
	„ „ Mr. Lambert.
	„ „ „ Risley.
	„ „ „ Cotton.
	„ „ „ Allen.
	„ „ „ Woodroffe.

The HON'BLE MR. WOODROFFE moved that in section 10, after the word 'duties' the words 'within or in relation to the village of which he is chaukidar' be inserted; also that in the 2nd sub-section of the same section, for the words 'outside of it' the words 'in any adjoining village' be substituted; also that in the 8th sub-section of the same section, after the word

'two' the word 'consecutive' be inserted. He said:—"I think this amendment is not one which will involve much discussion. I understand that the notion of a village chaukidar is that of a person who has village duties in the shape of watch and ward, and the only object of my amendment is to make that clear, which I doubt not was the intention of the framers of the Act. It is manifestly not intended that he should be a man paid by the village for duties to be performed in a distant part of the country unconnected in any way with the village to which he is appointed. The second portion of my amendment will enable him, if there has been any riot or disturbance in an adjoining village, to act in relation thereto, and to bring to the notice of the police the gathering of bad characters in the neighbourhood. And the third portion of the amendment is to express clearly what I take to be the meaning of the section, namely, that the absence should be for two consecutive months."

The Hon'ble Mr. Cotton said:—"I regret that this amendment is one which I think should be opposed. It is an innovation. It is a restriction on the powers of the chaukidar, which has never been imposed in Bengal or, as far as I am aware, in any province in India. It is perfectly true that the main function of the chaukidar is purely local. At the same time to lay down by law that his duties shall not extend beyond the village is likely to prove embarrassing in practice. The chaukidar does not spend his whole time in the village. One very important duty is his (generally) weekly visit to the thána. In traversing the road across country from his village to the thána he passes through many villages, and he may not improbably be called upon by the panchayat or chaukidar in another village to assist him in the apprehension of a criminal or to quell a riot; or it may come to his knowledge that there is a gang of thieves in the neighbourhood, a fact of which it is for the well being of his own village that he should acquaint himself and report to the police; and it will be very embarrassing to legislate him out of such duties and powers; powers which he will certainly exercise whether you legislate him out of them or not. This is a law for the guidance of our executive officers as between themselves; it is not a law for the protection of the public in particular; and as such, in other provinces, these matters are left to be determined by rules framed by the Government. In Bengal we have preferred to adopt exact law, but we have always endeavoured not to be too rigid. These powers have always been exercised by chaukidars in the mufassal and no one has ever objected to them, and the Bill merely legalises the existing practice. To restrict these powers by

minute legislation such as the Advocate-General proposes will be contrary to the spirit of the Act, and will undoubtedly prove embarrassing. I shall therefore venture to hope that the Council will leave the section as it stands."

The HON'BLE MR. WALLIS said:—"I cannot quite understand the proposals made by the learned Advocate-General, because I think the first portion of his amendment is contradicted by the second. It appears to me that by the insertion of the words in the first sub-section, 'within or in relation to the village of which he is chaukidar,' limits his duties to the village in which he is paid, and in the second sub-section the words of the amendment seem to provide for his having certain powers outside the village to which he belongs, and I therefore fail to understand how the two portions of the amendment can be reconciled."

The HON'BLE MR. WOODROFFE said:—"I understand there is no objection to the insertion of the word 'consecutive' so as to make it express absence for two consecutive months, which, I suppose, is what is intended. For the rest, the object of the amendment is to denote that the duties of the chaukidar are primarily for the village, and that explains the apparent contradiction to which the Hon'ble Mr. Wallis has referred. For my own part I should have preferred to leave out the words 'or outside of it,' but on consideration I thought that if an arrest were made near the boundaries of the village it might be doubtful whether the duty was performed in relation to the village."

The HON'BLE THE PRESIDENT said:—"The only fear I have in this matter is that which has been expressed by the Hon'ble Mr. Cotton, whether you are not by these words creating a technicality by means of which a great many persons may get off. We know how often it happens that, through some quibble of the law, men whom every one knows to be guilty have to be released. The boundaries of villages are not very certain, and it would be very unfortunate if a chaukidar had arrested a burglar, and the case broke down on the ground that the place where he committed the crime, or where he was arrested, was not within the chaukidar's village or an adjoining village. I should be very glad if the Hon'ble Mr. Woodroffe can assure us that there is no danger of such a fiasco occurring in consequence of this restriction."

The HON'BLE MR. WOODROFFE said:—"I think, with reference to arrests, my amendment may give rise to some difficulty—not that a guilty person

would get off, but that the chaukidar might be held to have exceeded his duty. But having regard to the doubt which has been suggested, and after what has fallen from the President, I would ask leave to withdraw the first and second portions of my amendment."

The first and second portions of the amendment were, by leave, withdrawn, and the motion to insert in the 8th sub-section of section 10 the word 'consecutive' after the word 'two' was agreed to.

The Hon'ble Mr. Woodroffe moved that the following proviso be added at the end of section 10:—

'Provided always that no chaukidar appointed under the provisions of this Act shall be employed by any police officer on his private concern, or on any duties not by this Act made obligatory on such chaukidar.'

He said:—"The Council is probably aware that this is practically the re-enactment of a provision to be found in Regulation XX of 1817, by which, under section 21, sub-section (3) daroga and police officers are prohibited from employing police officers and village watchmen on their own private concerns. From what has been decided by the Council and has fallen from the President in the matter, it seems to be the general idea, that everything that can be done reasonably should be done to secure a better class of chaukidars. The President has pointed to the low condition of the chaukidars in this province, and how, owing to measures having been taken to alter that state of things in the North-Western Provinces, a better class of persons has been there secured. There is in the Police Committee's report abundant evidence of the unfortunate state of things in which the chaukidar often finds himself. Among various notes and minutes on this Bill, I find the Magistrate of Murshidabad saying that the chaukidars are pretty well the slaves of police officers both at the thána and in the mufassal. In a note by Rai Nundkishore Das, Bahádur which receives the assent of Mr. Toynbee, Commissioner of Orissa, he says:—'He is very frequently detained in the police-stations for the purpose of keeping watch and ward over the police-station, tilling the head-constable's garden land, and doing divers other works assigned to him.' Further, Babu Juggomohun Roy, late Deputy Magistrate and Collector, says:—'I think a better class would come forward if only they saw that the post does not necessarily involve the doing of the various sort of degrading services on which chaukidars are not unoften employed. They are the luggage bearers of constables and

head-constables, and drawers of water and hewers of wood and grass-cutters at the stations and outposts,' a view of the position which the Commissioner admits and trusts to see remedied. Again, the Officiating Magistrate of Malda, described by the Commissioner of Bhagalpur as an efficient native gentleman occupying an important official position, says:—'The thána officers expect the village chaukidar to do all sorts of menial duties for them, to cut their grass, rub their horses, clean their compounds and water their trees and plants, hew their wood and draw their water and carry their loads. This destroys all self-respect in the chaukidar; he is beside the slave of the writer-constable, who takes his weekly attendance.'

"The Bhagalpur Landholder's Association say:—'If the chaukidars be not subjected to ill-treatment by the police and be freed from having to do menial duties for them, a better class of men would come in to serve as chaukidars, and much of the evil now existing would be removed.'

"I think the Council will see that there is sufficient justification for this amendment. We want to have a better class of chaukidars. I believe a proposal of this kind was brought up in some form in the Select Committee, but then it was thought that to embody it in the Bill would necessitate the imposition of penalties for exacting such duties. That was rejected as being outside the scope of the Bill, and therefore I have not proposed any penalty clause in this amendment. It will be sufficient as a note of warning to the chaukidar that he is not bound to do such things. If, on the face of that, officers of police make use of chaukidars for such purpose, they can complain to the Magistrate, who can deal with the complaint departmentally. The object in view is to get as good a class of men as possible to be chaukidars, and doubtless by this means the Magistrate will be able, when appointing chaukidars, to tell them that they are not expected to perform such duties for police officers."

The HON'BLE MR. COTTON said:—"This is exactly one of those provisions of an impractical character which should not be introduced into legislation at all. I do not think it is the business of the Council or of any legislature to lay down rules for the guidance of the relations between the daroga or the head-constable and the village chaukidar. If the Local Government possesses any powers at all, it possesses ample powers for such purpose, and that is why, when the Act of 1870 was passed, such provisions or their equivalent, which undoubtedly existed in the Regulation of 1817, were repealed. It is

perfectly true that the chaukidar is commonly used in the mufassal by the daroga and other police officers as their servants, and so long as human nature remains as it is, until at least the character of the Bengali very materially changes, so long such practices will continue. When the daroga goes into the village to enquire into a crime he will shout to the chaukidar and will utilize the chaukidar in his service as long as he remains in the village. When the chaukidar comes to give his *hazree* in the thána, if the thána has to be swept, the chaukidar will be told to do it. A *brutum fulmen* of this kind in the law will not affect the procedure in this respect any more than the clause in the Regulation of 1817 affected the relations between the chaukidar and the police. As time advances no doubt improved relations may be expected to exist, but it is in accordance with my experience of this country that subordinate officers will always be utilized by higher officers on their own personal concerns. How many high officers of Government are there who do not habitually employ Government chaprásis in their private work. It is a recognized and understood thing. If it is abused it becomes a scandal and should be put down. I believe the daroga does occasionally abuse his power and goes too far; but you cannot stop it by legislation, and this is not a proper provision to introduce into a law. These are matters which should be left to the Lieutenant-Governor and the Inspector-General of Police."

The HON'BLE MR. LAMBERT said:—"I think it should be known to the Council that even if the practice exists to any large extent of the employment of chaukidars by sub-inspectors and by head-constables, it certainly has not the sanction of the higher officers of police, who are responsible for the control of their subordinates. The rule which formed a part of Regulation XX of 1817, now finds a place in the Police Manual issued by the Inspector-General for the guidance of police officers; and I am sure it will assist the Inspector-General and the District Superintendents to know that the provision which is now proposed is given a place in this law and not in the Police Manual only, and also that the chaukidar should know that it is not incumbent upon him to perform such services. I shall be very glad to see this proviso find a place in this Bill."

The HON'BLE MR. ALLEN said:—"I think that a proviso which declares a certain thing to be unlawful and provides no penalty as a sanction to prevent such unlawful thing being done comes very much under Shakespere's censure of making 'a scarecrow of the law for daws to peck at.' To put sections into a

law declaring an act unlawful, and to impose no penalty on the persons who do that unlawful act, is an idle farce. This provision has been in existence for seventy-five years, and how ineffective it has been is shown by the reports which have been read by the learned Advocate-General. The Executive Government and the heads of police are quite competent to check the practice and to prevent it becoming excessive. But there are numbers of matters in which it is perfectly right that the chaukidar should be employed by sub-inspectors, though they may be properly called private purposes. Suppose a sub-inspector goes to a village to investigate a case. As he is trotting along on his pony, the pony comes on his nose and the sub-inspector is landed in a paddy khet. The pony trots off, and the sub-inspector shouts out to a chaukidar *pakro pakro*. Oh, says the chaukidar, it is not lawful to employ me on your private affairs, catch your pony yourself. There are numbers of other instances might be put in which it is impossible to say whether the work done is public or private. Probably the sub-inspector would say 'catching his pony was not private but public work as he was on duty.' Then, again, what constitutes 'employment.' It is much better that things of this kind should not find a place in the Bill. If we are not prepared to provide a penalty, we had better leave the provision out. I have no doubt that the higher officers of police are quite as desirous as any one here to prevent abuses in this matter, but I am afraid many years will have to pass before they will succeed in stopping what is the custom of the country. Visit any civil court between this and Murshidabad, go to the Nazir's house, and how many peons on the court's establishment will you find on duty there. It is the practice of the country that every man in authority employs the men immediately under him on his own affairs, and his subordinates are only too well pleased to be so employed in the hope of thereby recommending themselves to his favourable notice."

The HON'BLE MR. WOODROFFE said:—"No more forcible argument could be used in support of my amendment than that which has just fallen from the Hon'ble Mr. Allen. If according to him it is the prevailing rule in the country that people in authority use those under them to discharge personal duties to themselves, the sooner and the more distinctly it is known that it is wrong, the better. Of course it is easy to throw ridicule on any proposition. I don't suppose any reasonable man would have thought for one moment that the catching of a pony for a sub-inspector would amount to the performance of

menial offices. As to the provision having been in existence for seventy-five years, I can only point out that that clause was unfortunately repealed in 1870 as regards all villages to which Act VI of that year was made applicable. Therefore the present state of things is the outcome in a large measure of that repeal. No answer has been made to what I pointed out, namely, that if you make this amendment you take steps towards securing a better class of chaukidars.

"I have no objection, if the Council think fit, to add to the provision any penalty that may be desired. But I venture to think that a remark of a highly practical character fell from the Hon'ble Mr. Lambert, familiar as he is with the practice and duties of the police, when he stated that it would be a great help to the superior officers to find in the law a clear enunciation and limitation of the duties of the chaukidars. We should then have some reasonable expectation of getting a better class of chaukidars. Under the Regulation of 1817, the penalty is 'under pain of dismissal from office,' or if that be thought too severe, it might be under such penalty as may be awarded by the proper police authority."

The HON'BLE THE PRESIDENT said:—"Every member of Council must feel warm sympathy with the Hon'ble Mr. Woodroffe as to the motive of this amendment, and if anything of the kind still went on as is described in the extracts which had been read, it would be a death-blow to any reform. It is absolutely necessary that this sort of degradation of these public officers should be put a stop to, and I am sure I shall have the support of all the officers of the Executive Government in putting down such practices. At the same I entirely concur with what fell from the Hon'ble Mr. Allen, and I am delighted to hear an expression of the views I have long held myself, and which are not sufficiently attended to in any Council which drafts laws in India, views which would have saved us a great deal of trouble if it had always been held that penalties should be exacted in all cases in which duties are prescribed. For instance, it has been provided that the Local Government should send in a report within a certain date, but in certain Acts there is no penalty attached in cases of non-compliance, and such provisions tend to bring the law into disrepute. Therefore if the Council allows this amendment to pass, I trust they will also allow a further amendment to be put at a future stage of the Bill imposing a penalty for the breach of the rule, and that the Hon'ble the Advocate-General will consider it in the meantime."

The Motion was then put and carried on the following division :—

Ayes 7.	*Noes* 4.
The Hon'ble Mr. Playfair.	The Hon'ble Maharajah Sir Harendra Kishore Sing Bahadur.
„ „ Babu Gonesh Chunder Chunder.	„ „ Mr. Wallis.
„ „ Shahzada Mahommed Furrokh Shah.	„ „ „ Cotton.
„ „ Dr. Mohendra Lal Sircar.	„ „ „ Allen.
„ „ Mr. Lambert.	
„ „ „ Risley.	
„ „ „ Woodroffe.	

The HON'BLE MR. WOODROFFE moved that in section 43 of Act VI of 1870, as amended by section 10 of Act I of 1886, for the words 'or person as the Magistrate shall appoint' the words 'as the Local Government may by rules made under this Act prescribe or direct' be substituted ; and that such amendment, if allowed, be numbered section 12 of the Bill, and the subsequent sections be re-numbered. He said :—"The vote which has just been passed emboldens me to conclude that this amendment will also receive the assent of the majority of the Council. The matter in issue is one which bears directly on the point we have just now been considering, namely, the improvement of the condition of the chaukidar, and perhaps possibly of obtaining a better description of men. Under section 43 of Act VI of 1870, it is provided that 'Every chaukidar shall receive month by month the full amount of his salary from the member of the panchayat appointed to collect the tax'

"That section at all events was definite. It stated the time when the money was to be paid, the amount to be received, and the persons from whom it was to be received; but I venture to think that the amendment introduced in 1886 by the Legislature left the matter of payment in a very unsatisfactory state by enacting—'The chaukidar shall receive quarter by quarter the full amount of his salary from such officer or person as the Magistate may appoint.' The report of the Police Committee shows that it has been attended with the most disastrous results. There is no sort of system; no sort of order. The Police Committee consider this matter to be one of the most important possible, and yet, strange to say, there is not in the Bill as drafted, nor as it has been amended by the Select Committee, any provision on the subject. In paragraph 50 of their report the Police Committee say :—

'The payment of chaukidars is the principal and essential point in the opinion of most officers and much attention is paid to it, though the systems in force in different districts

vary very much. In the 24-Parganas, where a late Magistrate, Mr. A. Forbes, has given very great attention to the matter, an elaborate system has been in force since 1886 which has been very successful in securing punctual payment to the chaukidars. Once a quarter, on a date fixed and notified to the panchayat beforehand, the District Superintendent of Police, the Subdivisional Officer, a Deputy Magistrate, or a Police Inspector appointed by the Magistrate of the district under section 44, goes to each police-station and outpost, and is there met by all the chaukidars of that jurisdiction. The collecting member of the panchayat also attends with the chaukidars' pay for the past three months, which is then and there paid to him in presence of the presiding officer, and the payment entered in a register kept for the purpose. To avoid harassing the panchayats, they are allowed, when it is not convenient to attend in person, to send the money by some other person or by the chaukidar. When the payments are completed, a return of all cases of default is submitted to the Magistrate, who issues a distress warrant under section 45 on the panchayat. The peon who executes the warrant pays the money into court, whence it is disbursed to the chaukidars. Under this system the number of chaukidars in arrear has sunk to a very small proportion, and the pay of these is realised by warrant in an average period of 24 days from the fixed date of payment. The chaukidars are said not only in this district, but throughout these provinces, to prefer monthly payments, and are alleged to borrow from panchayats and mahajans money to go on with till the next quarter's salary is due; but to carry out monthly payments in the manner above described would undoubtedly be too great a strain on the supervising staff, and must for the present be given up as impracticable. The acquittance rolls prescribed by Government notification of 17th March 1877, paragraph 9, have been discontinued in this district; acquittance registers are kept instead at each thána and outpost, and these are said to be more effectual than the old rolls which were kept by the chaukidars themselves.'

"Then they proceed to recommend a system of payment. But that not having been accepted it occurred to me that the Executive Government should make rules which should be uniform and apply them throughout the country at large. There will not then be the uncertainty and delay consequent on the want of system referred to in the report, and the chaukidar will know from whom he has to get his pay, and when and where. He will no longer be driven from pillar to post: there will be some order and some regularity.

"Since the publication of the Police Committee's report there have been many expressions of opinion. Mr. Forbes, Commissioner of Dacca, says:—'As regards the question of the steps to be taken to secure the regular collection of the tax and the payment of the chaukidars, I would invite your attention to the scheme I introduced in the 24-Parganas district. It is noticed in paragraphs 50 and 51 of the Committee's report. The Committee disapprove of it on the ground that it entails considerable labour on the Government officials, and apparently also for

the curious reason that the more punctually the chaukidars are paid, the worse they work. This is a rather startling theory, considering the object of the Committee's report. If it were only true, they might have been spared their labours.'

"Again, the Magistrate of Birbhum says:—'The greatest evil by far is the admitted fact that under the Act the chaukidars do not get paid either fully or punctually; and I say emphatically that the sufficient and punctual pay of the chaukidars is absolutely essential—a *sine quâ non* in reform of the system—without which any reform is hopelessly impossible.'

"Mr. Oldham, Commissioner of Chittagong, says:—'The greatest difficulty to me in the draft Bill is as regards the arrangements which will have to be made for paying the chaukidars. The point on which I lay most stress is the original work which it intends to lay on the District Magistrates.' But in the scheme which finds a place in the amendment which I move, I do not see any reason to suppose that there will be a considerable amount of work laid upon the District Magistrate. It would be entirely in the hands of the Local Government to prescribe by whom and where the payment should be made."

The HON'BLE MR. LAMBERT said:—"It appears to me that the learned Advocate-General has hit upon the weak point of the Bill. The object of this Bill is to make the village police more efficient and to procure in each village the best man available for the post. To this end the Bill makes certain changes in the mode of appointment of the chaukidar and in other cognate matters. It also defines more accurately the duties which the State requires of him as its servant. But though the chaukidar's duties are enlarged and increased responsibility is cast on him, there is nothing in the Bill to improve his position or to provide that his appointment will be secured if he is honest in the discharge of the duties imposed on him.

"It need hardly be pointed out that before the Government can reasonably hope to obtain proper assistance from the village chaukidar, it must at least secure him in his position, and let him feel that, so long as he does his duty, he will get his full pay regularly, and be maintained in his office. That chaukidars are, in the majority of districts, not regularly paid, is abundantly shown by what we have heard from the learned Advocate-General.

"It is, as I understand it, one of the objects of the present legislation to deal with the defects brought to notice in the report of the Committee, and

therefore, I trust, that the present opportunity will not be lost to effect some substantial improvement in this most important part of the subject—that of payment of chaukidars.

"It appears to me, that all legislation in connection with the chaukidari system will be nearly infractuous, unless provision is made at the same time for securing the chaukidar in his position, and this can be done only by making provision for the punctual payment of his salary.

"Hitherto the arrangement of this matter has been left to the discretion of the various district officers, and it is, I think, proved by the report of the Committee, that precise rules are required to secure uniformity on this very important subject. On these grounds I beg to say that I heartily support the motion of the learned Advocate-General."

The Motion was put and carried unanimously.

The Hon'ble Mr. Woodroffe moved that in section 12 after the word 'village' the words 'or group of villages' be inserted. The amendment, he said, was a purely clerical one. A tahsildar might be needed for the collection of rents in a village or a group of villages.

It having been pointed out that there were other sections in the Bill in which the words 'a village' were only used, while in some sections both the expressions appeared, the further consideration of this amendment was postponed for a proper examination of the various sections of the Bill.

The Hon'ble Mr. Woodroffe, moved that, in section 13 of the Bill, there be inserted after the word 'notice' the words 'in writing,' and between the words 'or' and 'neglect' the words 'after the lapse of a reasonable time in that behalf'; also that the word 'forthwith' be omitted, and that for the word 'person' the words 'other Magistrate of the first class subordinate to him' be substituted. He said:—"The question is whether the notice on the panchayat should not be in writing so as to afford a security that the notice has been served. And the amendment also provides that after such notice is served a reasonable time should be given, if there be neglect, before the Magistrate begins to exercise the powers mentioned in the section. It seems to me rather a harsh proceeding to suddenly terminate the functions and powers which remain vested in the panchayat by a notice which may be misunderstood."

[*Mr. Cotton; the President.*]

The HON'BLE MR. COTTON said:—"I have no particular objection to the amendment. The law, as it stands in regard to all this procedure, has been in force for many years, and there has never been found any difficulty in the matter, but I do not care to oppose what has been proposed."

The amendment was put to the vote and carried on the following division:—

Ayes 9.	*No.* 1.
The Hon'ble Mr. Playfair.	The Hon'ble Mr. Allen.
„ „ Babu Gonesh Chunder Chunder	
„ „ Maharajah Sir Harendra Kishore Sing Bahadur.	
„ „ Mr. Wallis.	
„ „ Shahazada Mahommed Furrokh Shah.	
„ „ Dr. Mohendra Lal Sircar.	
„ „ Mr. Lambert.	
„ „ „ Risley.	
„ „ „ Woodroffe	

The HON'BLE THE PRESIDENT, in adjourning the Council to Saturday, the 20th August next, said:—"I hope by that time this Bill, as now amended by the Council, will be printed and circulated to hon'ble members. Some verbal amendments may still be needed to fit in the different parts of the Bill to suit the alterations which have been made, and a little time will be required for the due consideration of the Bill as a whole, but, as far as I understand, the principles of the Bill has been settled, and I hope the Council will be able to pass the Bill finally on the 20th of August."

The Council adjourned to Saturday, the 20th August, 1892.

CALCUTTA;
The 15th August, 1892.

E. W. ORMOND,
Offg. Assistant Secretary to the Govt. of Bengal, Legislative Department.

Reg. No. 461G—300—25 8 92.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Saturday, the 27th August, 1892.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE J. T. WOODROFFE, *Offg. Advocate-General.*

The HON'BLE T. T. ALLEN.

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE H. H. RISLEY, C.I.E.

The HON'BLE J. LAMBERT, C.I.E.

The HON'BLE DR. MAHENDRA LAL SIRCAR, C.I.E.

The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.

The HON'BLE A. H. WALLIS.

The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.

The HON'BLE GONESH CHUNDER CHUNDER.

The HON'BLE P. PLAYFAIR.

VILLAGE CHAUKIDARI ACT, 1870, AMENDMENT BILL.

The HON'BLE MR. COTTON moved that the clauses of the Bill to further amend the Village Chaukidari Act, 1870, be further considered in the form recommended by the Select Committee. He said:—

"At the last two meetings of the Council the provisions of the Bill were fully considered, and many amendments were proposed and carried; but the result of those amendments has been that, in several cases it becomes necessary to modify not only the provisions of the Bill in detail, but also the substantive law, Act VI of 1870 as amended by Act I of 1871, and the subsequent law of 1886. The amendments which it is necessary to make are principally of a verbal character, but they are of none the less importance on that account, and the most important of them relates to the use of the words 'Magistrate of the district' and 'Magistrate' throughout these Acts. In Act VI of 1870, 'Magistrate of the district' is defined as the chief executive officer of the district by whatever name he may be designated, and the word 'Magistrate' is defined to mean the officer in charge of a sub-division of a district. Now one of the principles of the Bill introduced

into the Council, a principle which has been accepted, is that the Magistrate of the district is the officer responsible for administering the law, but that he should have the power, with the sanction of the Commissioner of the Division, of delegating that authority, either as a whole or in part, to any first class Magistrate under him, or to a Sub-divisional Officer, or to the District Superintendent of Police. That is an important change introduced into the law by this Council. As the law now stands, the Magistrate of the district exercises very few special and definite functions. He is empowered, under section 3 of Act VI of 1870, to appoint the members of the panchayat, and under section 10 of the same Act, he is empowered to remove or to discharge any member of the panchayat. As far as I am aware, those are the only powers which are expressly reserved to the Magistrate of the district under Act VI of 1870. There is no power under which he can delegate his authority in that Act. All the other powers of the Magistrate under Act VI of 1870 are exercised by the Sub-divisional Officer. In the Bill, as far as it has been approved by the Council, the Magistrate of the district is vested with many additional powers. He is vested with the power of delegating his authority, a power to which I have just referred; he is empowered to define a village, he is empowered to determine the number of chaukidars, he is empowered to fix the salaries of the chaukidars, and he is empowered to appoint and dismiss chaukidars. These are additional powers with which in the Bill, so far as it has been approved by the Council, the District Magistrate has been specifically invested. It is needless to point out to the Council that, as the law and the Bill now stand, there is risk of very considerable confusion, and in order to avoid this confusion, it is thought desirable to repeal the definition of 'Magistrate' under Act VI of 1870, that is to say, to enact that the section defining 'Magistrate' to mean the officer in charge of a sub-division shall no longer remain part of the Statute law.

"It has been put down in my name that I shall move that, the definition of 'Magistrate of the district' be also repealed; but I think on consideration that it is expedient that the definition of 'Magistrate of the district', as the chief executive officer of the district, by whatever name he may be designated, should remain.

"With your permission, Mr. President, I will, at the same time as I am moving that the definition of 'Magistrate' be repealed, also move the motions which are marked numbers (4) and (5) on the List of Business, and which stand

against my name, as those motions bear directly on this question of the definition of 'Magistrate.' The definition of 'Magistrate' being repealed, it becomes necessary that the word 'Magistrate' be understood as 'Magistrate of the district' in all places in which the word occurs, both in the existing law and in the Bill now before the Council. The Bill as now amended contemplates no other Magistrate than the Magistrate of the district. He is empowered to delegate his authority under section 3, but the law recognises the Magistrate of the district only. In order to ensure this object, I will move the amendment marked (*4*)."

The HON'BLE THE PRESIDENT said:—"I must ask the hon'ble member to confine himself to the motion before the Council. His covering speech can explain the line he intends to take altogether, but I think he should take the sense of the Council on each motion separately."

The Motion that the clauses of the Bill be further considered, was then put and agreed to.

The HON'BLE MR. COTTON then moved that the following section be inserted in the Bill after section 1:—

"In section 1, the definition of 'Magistrate' shall be omitted."

The Motion was put and agreed to.

The HON'BLE MR. COTTON also moved that the words "or group of villages", so often as they occur in sub-sections (*1*) and (*2*) of section 2 of the Bill, be omitted. He said:—

"The reason for this amendment is, that the Magistrate of the district is empowered, under section 4 of the Bill as it now stands, to define a village. The section runs thus:—

'The Magistrate of the district may, from time to time, by an order in writing under his hand, declare any local area or group of dwellings within the district of which he has charge to be a village for the purposes of this Act.'

"That section having been approved by the Council, the introduction of the words 'or group of villages' becomes mere surplusage and should be omitted from the Bill."

The Motion was put and agreed to.

[*Mr. Cotton; the President.*]

The HON'BLE MR. COTTON said:—"With the permission of the President, I have a verbal amendment to propose which is not included in the list of business. In section 2 of the Bill as it was passed at a previous meeting of the Council, the words 'Official Gazette' are used, but as Act VI of 1870 uses the words 'Calcutta Gazette', which are the words more ordinarily used in the legislation of this Council, I will move that the words 'Calcutta Gazette' do replace the words 'Official Gazette' both in sub-section (*2*) and in the second proviso of section 2, of the Bill."

The HON'BLE THE PRESIDENT said:—"Although no notice was given, I do not think there is any objection to the introduction of this clerical amendment."

The Motion was put and agreed to.

The HON'BLE MR. COTTON also said:—"In the same way, with your permission, I may point out that section 3 of the Bill as it is now before the Council is introduced as a substantive section in the law, and not as a proviso. When the Council discussed the provisions of this section regarding the delegation of powers, it was treated as a proviso, but it has now, for the convenience of drafting, been inserted as a separate section; and as this is a very small matter, I hope the Council will agree to the change."

The Motion was put and agreed to.

The HON'BLE MR. COTTON also said:—"The next motion in my name is also of a verbal character to bring about uniformity in the law. Section 4 of Act VI of 1870 has been repealed by section 4 of the Bill now before the Council. Section 5 of Act VI of 1870, however, refers to section 4 of the same Act, which has now been repealed. It is therefore necessary, looking to the fact that section 4 of Act VI of 1870 has been repealed, and also that the words 'or villages' are no longer required when the Magistrate is empowered to define 'a village', to insert the following section after section 4 of the Bill:—

'In section 5, the words *or in two or more villages so situate as in section 4 is set forth*; and the words *or villages*, so often as they occur in this section, shall be omitted.'

The HON'BLE THE PRESIDENT said:—"This amendment is of the same nature as the amendment for the omission of the words 'group of villages', which has

been approved by the Council. I conceive, therefore, there can be no objection to this alteration, which works to the same end."

The Motion was put and agreed to.

The HON'BLE MR. COTTON also said:—"The next motion is that to which I have already referred when I addressed the Council in regard to the omission of the definition of 'Magistrate.' The motion which appears in the list of business is, that the following section be inserted in the Bill after the last proposed section and before section 5:—

'In sections 6, 8, 9B, 20, 30, 45, 46B, 47 and 63, after the word *Magistrate*, so often as it occurs, the words *of the district* shall be inserted.'

"This is in accordance with one of the principles of the new Bill, that the Magistrate of the district, being responsible for working the law, but subject to the control of the Commissioner of the Division, should be able to delegate his powers to the officers specified in section 3 of the Bill. It has been suggested to me since I have come to this Chamber that it would be simpler to move that in place of the word 'Magistrate', wherever it occurs in the existing law, the words 'District Magistrate' should be inserted, and I myself think that that would be the simpler form of the amendment to be proposed. The Advocate-General, however, took exception to the use of the words 'District Magistrate' in the Bill as it was originally drafted on the ground that, in Act VI of 1870, the words 'Magistrate of the district' are used in the two or three cases in which they occur. It is a matter of no importance whether the words 'Magistrate of the district' or 'District Magistrate' are used, but as the Assistant Secretary points out that it will be more convenient for the purposes of drafting to use the words 'Magistrate of the district', I am quite willing that they should be used, as they mean the same thing. I have, therefore, also to move that in sections 9, sub-section (*1*), 11, 12, 14 and 15 of the Bill, after the word 'Magistrate', so often as it occurs, the words 'of the district' be inserted."

The HON'BLE BABU GONESH CHUNDER CHUNDER said:—"To make the law consistent, I move that the words 'and Magistrate' after 'panchayats' in section 64 of Act VI of 1870, be also omitted."

The HON'BLE MR. COTTON said:—"I concur with the HON'BLE BABU GONESH CHUNDER CHUNDER in the suggestion he has made. I omitted to bring it forward by oversight."

The HON'BLE THE PRESIDENT said:—"The motion before the Council is practically the amalgamation of motions 4 and 5 as they stand on the amendment list, to the effect that, where the word 'Magistrate' is used, it should be read as 'Magistrate of the district.' To this, the HON'BLE BABU GONESH CHUNDER CHUNDER has suggested the addition that, in section 64 of Act VI of 1870, the words 'and Magistrate', where they stood separately, should also be omitted. I shall therefore put the whole as an amalgamated motion."

The Motion was put and agreed to.

The HON'BLE MR. ALLEN moved that, in the existing Act as intended to be amended by this Bill, and in the Bill as amended by the Select Committee, for the words "Magistrate of the district", wherever they occur, the words "District Magistrate" be substituted.

The Motion was put and agreed to.

The HON'BLE MR. WOODROFFE said:—"Having considered the matter, I will ask the permission of the President to put the following amended motion instead of the motion standing in my name in the list of business, namely, that in sub-section (*9*) of section 11, for the words 'any officer of police' the words 'Sub-Inspector of Police or other officer in charge of a police-station' be substituted."

The HON'BLE THE PRESIDENT having given permission—

The HON'BLE MR. WOODROFFE said:—"Now that the word 'District Magistrate' in these clauses stands for 'Magistrate', there seems to be but little necessity in view of the powers of delegation which the District Magistrate possesses for any words after 'Magistrate'; but as this sub-section renders every chaukidar appointed under the provisions of this Act bound to supply local information not only to the District Magistrate, but to any officer of police, thus rendering the position of the chaukidar a very unpleasant and very troublesome one. I venture to submit that the object I have in view will be gained, and the law will be brought into conformity with what I understand to be the prevailing

practice; by rendering the chaukidar liable to supply any local information to the District Magistrate, and to the Sub-Inspector of Police or other officer in charge of a police-station. The chaukidar is bound under the law to report himself at the *thána*, and under the proposed amendment to give any local information which may be required to the *thanadar*; but he will not be at the beck and call of every member of the police force, but only of the Sub-Inspector or other officer in charge of the station. I understand that, as a rule, a Sub-Inspector is in charge of every *thána*, but that there are some instances in which a head-constable is in charge, and therefore I have added the words 'or other officer in charge of a police-station.' The chaukidar will not be liable to be dragged hither and thither to answer enquiries by persons who ought not to be placed in a position to exercise authority over him: he will have to answer enquiries by the officer to whom he is under the existing practice bound to furnish information."

The Hon'ble Mr. Cotton said:—"It is far from pleasant to me to appear to be always in opposition to amendments proposed in this Bill by the learned Advocate-General. But I regret to say that, though I have given this amendment my most careful consideration, and though some of its most objectionable features have been removed by the alteration which, with the President's permission, has been made in the motion, still as the amendment stands, it is open to the strongest objection from an executive point of view. The law of 1870 requires the chaukidar to supply any local information which the Magistrate or any officer of police, or any other officer thereunto authorized by the Local Government, may require. When the Act of 1870 was passed, the addition of the words 'or any other officer thereunto authorized' did not appear. They were introduced by the amending Act of 1871, to enable irrigation officers to make calls on the chaukidars to supply local information. The Government has now allowed those words to drop out, as they were felt to be of no great practical importance. But it has been felt—I speak on behalf of all executive officers in this Province—to be extremely important that the chaukidar should be required to furnish information to any officer of police when called upon to do so. And I will illustrate my meaning by one or two examples. A police constable is entrusted with the execution of a warrant of arrest; he proceeds to the village where the accused resides, and the first thing he does is to call the chaukidar and say, point out the accused person to me: where does he live, where shall I find him? Under the law as it stands, the chaukidar is bound to

give such information. Under the law as it will stand, if the Advocate-General's amendment is carried, the chaukidar may say, I am not bound to give you such information, you can find out for yourself. What a state of things! The constables of the regular police are the right-hand of the executive; they are the agents employed by the higher executive authorities, and they must obtain their information through the village chaukidars. It has often been said that the village chaukidar is the unit of administration in Bengal. As he now exists his position admits of very great improvement, and we trust that this Bill, as it is proposed to be passed, will result in somewhat improving his status. I do not expect that the result will be very great, but I hope it will certainly improve his status; and that a few years hence, by further legislation in the same direction, the object which has now been only sketched out in a very vague and tentative way, will be fulfilled. But taking the chaukidar as he now is, and always must be, the village police of the interior, he is the means by which the higher executive authorities obtain the information which is furnished to them through the executive police, and it is the police officer who enquires from the chaukidar whatever it may be necessary to ascertain.

"At the *thána* itself, where the chaukidar is required to do his *hazree* as it is called, that is to be present and report the events of the previous week within his village, the chaukidars attend in large numbers at a time; rules have been prescribed by the Government directing them to attend in large batches—it may be fifty or a hundred at a time. It is a difficult matter to take down the information which such a large body of men has to supply, and it can only be done by the officer in charge of the *thána* delegating to his subordinates the duty of making enquiries. It may be that when the chaukidar comes to do *hazree*, the officer in charge of the station is ten or twenty miles distant investigating a case. Often there is no one in charge of the *thána* to receive such information, and either the writer-constable or other constable possessed of intelligence above the average takes down the statements of the chaukidars; he fills up the register and does the work which in theory is done by the officer in charge of a police-station. Practically it is impossible for the officer in charge of the *thána* to take the examination of the chaukidars himself, to make all the enquiries necessary from the chaukidars who appear at the *thána* once a week.

"It is on considerations, such as these, that our predecessors enacted the provision in the law of 1870 that, the chaukidar should supply any local

information which any officer of police may require. The reasons which existed twenty-two years ago are equally valid now, and I can assure the Council that it will be a most embarrassing step to cancel those words and to introduce in their stead the words 'officer in charge of a police-station.' One of the main objects of the present Bill is to link together more closely, than is now the case, the village police and the regular police of the country. The Bill takes a very small step in that direction. It will be left for future legislators in this Council Chamber to complete the measure which we have this day begun, and that it will be completed, I for one have no doubt. The amendment of the Advocate-General directly traverses this principle of the Bill. If carried, the effect will be to weaken the connection between the regular police and the chaukidar. Our object is to strengthen it. On these grounds, both of principle and because the amendment, if carried, will cause the greatest possible inconvenience in practical administration, I hope the Council will allow this section of the Bill, as it has been drafted and laid before you by the Select Committee, to stand."

The HON'BLE MR. LAMBERT said:—"I am not satisfied, though I say so with much deference, that sufficient grounds have been shown to justify this amendment. Chaukidars, if not a component part of, are at least the auxiliaries of, the district police, and speaking for myself, as the head of a large police force, I should be extremely sorry to find the Legislature interfere and attempt to define the relations which should exist between the component parts of the force. By law, chaukidars are required to make reports to the officer in charge of a police-station, and it certainly seems to me that, if these reports are to be made for any practical purpose, it must be necessary for superior officers to depute their subordinates occasionally to the village to obtain further information in connection with the reports made at the *thána*; and so far as I am aware, it has never been alleged that, a policeman of any rank has at any time called upon a chaukidar for a report on matters not required by his official superiors or for official purposes. I may add, from what I know of policemen and chaukidars, that, so long as policemen are policemen, and chaukidars are chaukidars, this amendment, if it is passed, will certainly be a dead letter."

The HON'BLE MR. WOODROFFE in reply said:—"I confess I am not converted by the remarks which have fallen from the HON'BLE MR. COTTON and the

HON'BLE MR. LAMBERT. Both hon'ble members referred to enquiries being made by superior officers, Sub-Inspectors, or officers in charge of *thánas*, and to their delegating their subordinates to make enquiries. I look on such enquiries as enquiries made by the Sub-Inspectors or officers in charge of *thánas*. It is not my intention in any way to interfere with the making of such enquiries. It is only in reference to enquiries made independently by Police officers not being, in the position of Sub-Inspectors or officers in charge of a *thána*, that I wished to make provision."

The HON'BLE THE PRESIDENT said:—"In putting this motion, I wish to say that on the whole, it seems to me, from the point of view of the Executive Government, that the amendment which has been proposed might be somewhat injurious to the efficiency of the administration. I quite think with the Advocate-General that the words he proposes to introduce ought to be understood to include the cases which the HON'BLE MR. COTTON put, especially the very common and important case of a policeman being sent to execute a warrant, and requiring information from a chaukidar as to where the accused resides, or where he is to be found. Supposing the amendment to be carried, that the intention of the mover evidently is that it shall not interfere with such matters, and it ought not to interfere with such matters. But there is just the possibility of some lawyer or other technically-disposed person advising a chaukidar that he is not bound to give information, except to a Sub-Inspector or other officer in charge of a police-station, and if a single criminal escaped from justice by such a misunderstanding, it would be a great misfortune. Considering that we are not making any change, but are re-enacting the law as it stands, and that there is nothing in the Police Committee's report, or in the reports of the officers who have been consulted, to show that the section has worked ill, I must say that I hope the Council will allow it to remain unaltered."

The Motion was then put and negatived.

The HON'BLE MR. WOODROFFE also moved that the following words be inserted at the end of the proviso in section 11:—

'and that any police officer so employing any such chaukidar shall be punishable with fine which may extend to fifty rupees.'

He said:—"The Council will remember that at a previous meeting it was agreed by a considerable majority that this proviso should be inserted.

Objection was made to it on the ground that there was no sanction attached, and it was suggested that, when the Council next assembled, I should put before the Council some clause which should contain that sanction. Accordingly I now propose to add these words to the proviso in section 11. I pointed out at the time that the provision in the Regulation from which this section was taken contained such a very severe penalty, namely, that of dismissal from service, that it had practically reduced the section to a dead letter, and it is in that view that the amendment now suggested has been framed on much more moderate lines.

"It has, however, been represented to me that the proviso, as it has been passed by the Council, contained words which might very seriously impede the executive authorities in respect of the employment of the chaukidar, and that mischief lay in the words 'or on any duties not by this Act made obligatory on such chaukidar.' I need hardly say that it was far from my intention and, as I believe, also far from the intention of those who voted with me, that those words should be taken to include such matters as, for instance, requiring the presence of chaukidars on the advent of the Lieutenant-Governor of these provinces, or of any other important executive authority coming to the station, or any matter of that kind. It was not intended that the chaukidar should be put in a position to say, it is no part of my duty to assist in making preparations for the reception of the Lieutenant-Governor at the station. I understood and do understand that those words were governed by the term 'any police officer', and that they were not intended to prevent the chaukidar from being employed on such purposes as I have indicated.

"And, further, it has been pointed out to me that the object I had in view in moving that proviso, and the amendment which the Council is now asked to be added to it, could or might more effectually be obtained by the action of the executive authorities brought to bear directly on police officers in the discharge of their duties to the chaukidar, and of the chaukidar in connection with their relations to police officers. If such orders can and will be made in such a manner as to secure the object, which I believe the Council had in view in passing this proviso, namely, that police officers should not use chaukidars in menial employments, I am prepared, with the President's permission, to withdraw not only this amendment, but to move the omission of the words 'or on any duties not by this Act made obligatory on such chaukidar', contained in the proviso.

"For my own part, I have much more faith in the written letter of the law than in circular orders—and for this reason, that circular orders depend entirely for their observance on the zeal of the executive officers in the performance of their duties, and on the assiduity with which those orders are constantly brought before them. If those orders are not efficiently carried out, if there are not strong hands to insist upon their being carried into effect, they are, we all know, liable to be relegated to entire obscurity.

"If, therefore, I am in order in making these observations in reference to the amendment I propose, I shall be prepared, with the President's permission, to withdraw the amendment I have proposed and the words to which I have referred in the proviso, if there can and will be given by the Government an undertaking, to pass such rules and orders as will secure the object which, I believe, the Council had in view in accepting the proviso to section 11."

THE HON'BLE THE PRESIDENT said:—"I think I had better intervene at this early stage, contrary to my usual practice, and state the views which the Government have on this subject. I sympathize so entirely with what the Advocate-General has said, and I appreciate so completely the motive which has induced him to bring it forward, that I should be very sorry if any impression is created that I am opposed to his views, or that I wish to do anything which would weaken the effect of the sentiments which he has expressed. On the other hand, I wish to make it as plain as possible that I entirely agree with him, and that the only difference between us is, that the way in which I propose to meet the case is likely to be better and more effective. The HON'BLE MR. WOODROFFE has said with great truth what the drawbacks are with regard to executive circular orders. It is true that they are often forgotten; and it is possible that they may be disobeyed. If the officer to whom the carrying out of a circular order is relegated is not vigorous in his desire to carry it out, and is not stirred up by inspecting officers, it is quite possible that it may be disobeyed and forgotten. But exactly the same thing takes place in regard to the law. We have here a crucial instance. The amendment which we are now debating is, the re-introduction of a passage from an old Regulation which has existed for nearly 80 years, and which has been practically forgotten and has not been carried out. So that, as regard the *modus operandi*, the matter in which you envelop your decision, it makes very little difference whether you proceed by introducing a section into a law or by issuing a circular order. But there is this difference that, when the Executive Government pledges itself on

an occasion like this to see that what is required is carried out, something of the personal element comes in. There is a body of persons who have made themselves directly responsible to see that it is done, but if you merely put it into the law, it is nobody's duty in particular to see that the law is carried out. The law is, as a general rule, expected to be self-acting. A Government order is like a nail driven home by the strikes of every official concerned in carrying out the law, by those in authority over him and by the inspecting officers—the Inspector-General and the Deputy Inspectors—on their tours; and therefore you have more persons concerned in effecting the object you have in view, than if you put it into a section of the law and let it lie there.

"I wish to mention here that orders were issued which touch upon this subject some little time ago, as has been mentioned by the Chief Secretary. These orders have been slightly revised, and I have now a draft received from Mr. Henry, Inspector-General of Police. This was not done by him in communication with me, or in connection with the matter immediately before the Council; but of his own accord. One of the rules laid down is, that chaukidars are not to be taken away from their villages on miscellaneous or other work, except in special cases; and that anybody misusing them will be liable to summary dismissal. These instructions are sent to District Superintendents, who are directed to communicate them to all officers in charge of police-stations who are to publish them at the time of the weekly parades of chaukidars, of which we have all heard. The instruction, as it stands by itself, corresponds very much to the proposed amendment of the law, and is just as liable to be ineffective. But what I propose to do is, to issue orders that every District Superintendent of Police shall not only vigorously carry out the orders, but shall mention in his annual report what he has done in this direction, and shall write a special paragraph containing information regarding any instances he may find in which these rules have been neglected or traversed. The Inspector-General and his two Deputies will also receive instructions that, as they go round the Province (and as you know they visit every district in Bengal once a year), they themselves will give special attention to this point and mention it in their annual report; and this, when it is published, will be evidence to all concerned and to the public that, the Government is carrying out its pledge and giving due attention to the subject.

"I, therefore, venture to think that of the two measures, the one more likely to be direct and effectual in carrying out the views of the Council is the one

I propose, and if the Advocate-General finds himself able to accept my assurance, and if you, gentlemen, agree to accept my pledge, I shall be glad to see it moved that, the *proviso* which was passed at the last Council meeting should be struck out, and the amendment standing in the HON'BLE MR. WOODROFFE'S name shall be allowed to be withdrawn."

The HON'BLE MR. ALLEN said:—"On the last occasion I apparently acquiesced in the statements read by the Advocate-General from the papers before us, as to the extent to which this practice of misemploying chaukidars, as it is called, prevails. I take this opportunity to say that I am perfectly satisfied these reports are grossly exaggerated, and that the employment of chaukidars at the *thánas* is by no means so oppressive, or so entirely in violation of the law, as some of these reports make out. They talk of menial duties; the cutting of grass, the thatching of huts and the working upon the Sub-Inspector's garden. But the Sub-Inspector has no garden: it is the little plot of garden attached to the *thána*, property of the Government. I do not find that any European Magistrate has made such reports. The hostility with which the police are regarded by certain classes is well known to all who see the native newspapers, and it has largely coloured these reports. I believe that chaukidars are employed by the police at the *thánas*, but the business can in no proper sense be called menial or the private business of the Sub-Inspectors. It is business connected with the *thánas* which the constables themselves perform. As to the chaukidars being used as hewers of wood and drawers of water for the police officers, what Sub-Inspector, Hindu or Mussulman, would drink water from the hands of a *dosath* or *bowrie*, or any of the other low castes to which the chaukidar belongs? It is absurd."

The HON'BLE MR. COTTON said:—"I have only one word to add. I need hardly say that the expression of opinion put forward by the President on this subject is one with which, if I may venture to say so, I entirely and thoroughly concur. But in regard to the form of the proviso in the Bill, which I trust, after this discussion, may be withdrawn, I wish to say that this Council should not, I think, allow itself to be identified with any section of the law, which declares that a public servant, such as a village watchman is, should not be employed 'on any duties not made obligatory upon him' under any particular Act. That is a most pestilent provision. A member of the village police is not different in status as regards his public duties from a member of the regular

police, or, indeed, from any member of the public service. Whatever he may be told to do, that he must do; provided he is told to do it by competent authority. This is a rule I lay down for my own subordinates; and it is a rule I always carry out in my official capacity. Whatever orders I receive, I obey: and whatever orders I give, I expect to be carried out. It seems to me that the Council was about to identify itself with a most pernicious provision of the law, and I am only too thankful that we are offered the present opportunity of receding from the great mistake which, at a very late hour of the debate at the last Council meeting, we inadvertently fell into."

The HON'BLE MR. WOODROFFE in reply said:—"May I be permitted to say that, had either of the two speeches which have just been addressed to the Council been made before I first spoke on this subject to-day, I should not have been prepared to go so far as I did. It raises the grave question, whether I should be justified in going to that length or not. This pestilent provision, this pernicious section, as it has been described by the last speaker, met with the approval of the majority of the Council. It is, I think, very undesirable that there should be introduced into this matter a disquisition as to the view with which the police are regarded by this particular section or that particular section of the community, whether with favour or with disfavour. Those who regard them with favour may err as much in excess in one direction, as those who dislike them may do in the opposite direction.

"I think, however, that what has fallen from the President, with respect to the orders proposed to be made, still leaves me free to do that which I suggested, namely, to let the Council decide whether this amendment should be withdrawn or not, and the proviso amended by removing the words 'or on any duties not by this Act made obligatory on such chaukidar.'"

The HON'BLE THE PRESIDENT said:—"I think no hon'ble member of Council will object to what the Advocate-General proposes to do, and I think that under the rules I have power to allow this proposal, to strike out those words at the end of the proviso, to be put to the Council."

The Proposal was put and agreed to.

The HON'BLE MR. WOODROFFE'S motion to add to the proviso to section 11 the words "and that any police officer so employing any such chaukidar shall be punishable with fine which may extend to fifty rupees" was, by leave, withdrawn.

The HON'BLE THE PRESIDENT then moved that the remainder of the proviso to section 11 be omitted from the Bill, on the understanding that the Executive Government undertakes to carry out the procedure which he had already described.

The Motion was put and agreed to.

The HON'BLE MR. COTTON moved that the following section be inserted in the Bill after section 13:—

'In section 44, for the words *as the Magistrate may appoint*, the words *as the Local Government may prescribe or direct*, shall be substituted.'

He said:—"This is a purely verbal amendment. Section 43 of Act VI of 1870, as amended by Act I of 1886, stands thus:

'Every chaukidar shall receive quarter by quarter the full amount of his salary from such officer or person as the Magistrate shall appoint.'

"For the words 'as the Magistrate shall appoint', the Council has already agreed to the substitution of the words 'as the Local Government may by rules made under this Act prescribe or direct', and the present amendment is intended to bring the two sections of the law into consonance with one another."

The Motion was put and agreed to.

The HON'BLE MR. COTTON said:—"I wish to ask the Advocate-General and the Council to agree to omit from section 15 of the Bill all the words after the words 'exercised by the Magistrate.' The power of delegation contained in the subsequent words 'or any Magistrate of the first class subordinate to him, or any Magistrate in charge of a sub-division or the District Superintendent of Police authorised by him in writing in that behalf' is now unnecessary. It is superfluous to give specific powers under this section, when full powers of delegation under any or all the sections of the Act have already been conferred upon the District Magistrate by section 3 of the Bill. There is no more occasion to give powers of delegation under section 15 than under any other section of the Act. I will therefore, with the permission of the President and the Council, move that in section 15 the words 'or any Magistrate of the first class subordinate to him, or any Magistrate in charge of a sub-division, or the District Superintendent of Police authorized by him in writing in that behalf' be omitted."

The Motion was put and agreed to.

[*Mr. Woodroffe; the President; Mr. Risley; Mr. Cotton.*]

The HON'BLE MR. WOODROFFE said:—"If I am not out of order, I wish to say that I am afraid my amendment on the proviso in section 11 has been misunderstood. What I moved was, only to strike out the words 'or on any duties not by this Act made obligatory on such chaukidar' at the end of the proviso. I did not move to strike out the whole of the proviso."

The HON'BLE THE PRESIDENT said:—"I understood the Advocate-General to agree to the omission of those words at the end of the proviso, and I put it to the Council on my own motion that, the remaining portion of the proviso be also omitted, and I understood the Council to agree to that also."

The HON'BLE MR. RISLEY said:—"Sub-section (*2*) of section 2 of the Bill, as it now stands, does not seem quite to accord with sub-section (*1*) of the same section. In connection with sub-section (*1*), there was a discussion as to the constitution of the panchayat, and whether a single person could be appointed to be a panchayat: and although sub-section (*2*) has been corrected in accordance with what the Council agreed to, the whole of the sub-section has not been redrafted on the same lines, but a portion of it has been drawn, so that one individual may be appointed to be a panchayat, a proposal which the Council has distinctly negatived. I therefore move that the following be substituted for sub-section (*2*) of section 2, in order to bring it into accordance with the first sub-section as it now stands in the Bill:—

'or (*2*) he may, with the previous sanction of the Local Government, direct that the adult male rate-paying residents of any village shall select, according to any rules that may be prescribed by the Local Government, and published in the *Calcutta Gazette*, not less than three nor more than five residents of the village to be the panchayat thereof, and the District Magistrate shall, if he approves of the persons so selected, appoint such persons to be the panchayat; but if, in his opinion, any person so selected is, for reasons to be recorded by him in writing, unfit to be appointed a member of the panchayat, the District Magistrate shall appoint a fit and proper resident to be a member of the panchayat.'

The Motion was put and agreed to.

The HON'BLE MR. COTTON said:—"It only remains for me to move, subject to the amendments which have been passed to-day, which will be very carefully examined by myself and the Assistant Secretary in order to see that they are completely in accordance with all the provisions of the Bill, that the Bill be now passed."

The Motion was put and agreed to.

BENGAL MUNICIPAL ACT, 1884, AMENDMENT BILL.

The HON'BLE MR. RISLEY presented the Preliminary Report of the Select Committee on the Bill to amend the Bengal Municipal Act, 1884.

ADJOURNMENT OF THE COUNCIL.

The HON'BLE THE PRESIDENT said:—"The business before the Council is finished for the present. The Council will now adjourn *sine die*, and will, I hope, re-assemble in the cold weather. Meanwhile I propose that the Municipal Bill, as it has been preliminarily amended by the Select Committee, shall be circulated, and opinions called for from local officers. And I hope that, when the Council meets again, the answers of those officers will have been received and laid before the Select Committee for consideration: and that in the course of the cold weather, we shall be able to pass both that Bill and the Fire-Brigade Bill, which are the only two measures at present before the Council."

The Council adjourned *sine die*.

CALCUTTA;
The 14th September, 1892.

E. W. ORMOND,
Offg. Assistant Secretary to the Govt. of Bengal, Legislative Department.

Reg. No. 539C—300—20.9.92.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 and 25 Vic., Cap. 67.

THE Council met at the Council Chamber on Monday, the 7th November, 1892.

Present:

The HON'BLE J. T. WOODROFFE, *Offg. Advocate-General, presiding.*
The HON'BLE T. T. ALLEN.
The HON'BLE H. J. S. COTTON, C.S.I.
The HON'BLE H. LEE.
The HON'BLE SHAHZADA MAHOMMED FURROKH SHAH.
The HON'BLE A. H. WALLIS.
The HON'BLE MAHARAJAH SIR HARENDRA KISHORE SING BAHADUR, K.C.I.E.
The HON'BLE GONESH CHUNDER CHUNDER.
The HON'BLE P. PLAYFAIR.

NEW MEMBER.

The HON'BLE MR. LEE took his seat in Council.

LICENSED WAREHOUSE AND FIRE-BRIGADE BILL.

THE HON'BLE MR. COTTON said:—"In order that all interests concerned may be properly represented on the Select Committee on the Bill regarding the Calcutta Fire-brigade, it is considered desirable that our hon'ble colleague Mr. Lee, the Chairman of the Calcutta Corporation, should be invited to serve on that Committee. With your permission, Sir, I beg, therefore, formally to propose that the Hon'ble Mr. Lee be added to the Select Committee on the Bill for the regulation of Warehouses and the maintenance of a Fire-brigade."

The Motion was put and agreed to.

The Council was adjourned *sine die*.

C. H. REILY,

Assistant Secretary to the Government of Bengal, Legislative Department.

CALCUTTA;
The 8th November, 1892.